

A

D I G E S T

OF

H I N D U L A W

ON

CONTRACTS AND SUCCESSIONS;

WITH A COMMENTARY

BY

*JAGANNĀTHA TERCAPANCHĀNANA:*

TRANSLATED FROM THE

ORIGINAL SANSKRIT.

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VOLUME THE FOURTH.

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CALCUTTA:

PRINTED AT THE HONOURABLE COMPANY'S PRESS.

M DCC XCVIII.

## CHAPTER V.

### ON EXCLUSION FROM PARTICIPATION.

#### SECTION I.

##### ON EXCLUSION FROM INHERITANCE.

###### CCCXIV.

**A**S a man would be drowned, who attempted to pass deep water in a boat made of woven reeds, so does a father sink in the gloom of death, who leaves only contemptible sons.

CONSEQUENTLY he, who is averse from performing constant and occasional rites, does not benefit his father : hence he is not capable of inheriting the paternal estate.

###### CCCXV.

**APASTAMBA** :—No doubt, all the sons, who are virtuous, take their shares ; but him, who illegally acquires wealth, even though he be the first born, let the king declare incapable of inheriting.

Who, though first born, illegally dissipates\* wealth : such is the construc-

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\* The same term is variously explained by the several commentators. I retain Sir William Jones's version of the text. T.

tion and sense: "illegally" by gaming or the like: "incapable of inheriting"; capable of inheriting no more than the residue of a share after deducting so much as has been dissipated by him. Some thus expound the text.

The *Retnâcara*.

CONSEQUENTLY so much shall be deducted out of his share, as has been expended with no view to the support of the family, to religious duties and the like. But, if more than the amount of his own share have been expended, the law does not direct, that the excess shall be considered as a debt: it is fit, that he should only be deprived of his share.

A PUERILE author reverses the reading; but to him, who acquires wealth by legal means, "an equal share with his father shall be allotted". That reading, says JI'MU'TAYA'HANA, is not traditional.

OTHERS explain the term (*pratipâdayati*), "acquires" or earns. Consequently he, who follows an illegal mode of subsistence, through avidity for wealth, without the sanction of the law, shall be deprived of his share. "Following an irregular profession," in the text of GO'TAMA, signifies subsisting by unlawful means.

### CCCXVI.

GO'TAMA:—THOUGH son of a woman equal in class, he, who follows an irregular profession, does not take a share of the inheritance, according to some lawgivers.

### CCCXVII.

MENU:—ALL those brothers, who are addicted to any vice, lose their title to the inheritance.

"ANY vice;" any forbidden acts, such as slaughter or the like, and reprehensible means of subsistence (Book II, Chap. IV, v. XX and XXVII). The virtual sense of the text (Book II, Chap. IV, v. XXVII 2), say these lawyers, is that usury, agriculture and commerce are honest professions for a

*Icâya;*

*Vaiśya* ; but, followed by a *Brāhmaṇa* or a *Cshatriya*, partake of the quality of passion.

Of these two the preferable opinion may be determined by the *regular* sense of the word *pratipādayati*. \* According to the best authors, the verb *pad*, preceded by *prati*, and augmented by the suffix *nyi*, is employed in the sense of "give;" preceded by *ut*, it is used as signifying to generate or produce. By the word "though," in the text of GÓTAMA, it is intimated, "much less shall the son of a woman unequal in class *take a share, if he follow an irregular profession*:" "share" must be supplied in the text.

By the expression "even though he be the first born," the middlemost and the rest are included in the text of APASTAMBA : an alternative, says the author of the *Prácāsa*, is deduced from a reference to the case of one, who is able to avoid illegal practices. Consequently the expression "according to some" denotes a contingency : and that contingency is thus settled ; he, who can avoid irregular means of subsistence, shall take a share ; but if he do not avoid them, he shall not participate. GOVÍCHANDRA also affirms, that the expression "according to some" denotes a double contingency, not a difference of opinion.

CULLU'CABHATTA expounds "addicted to any vice" (CCCXVII) devoted to gaming or the like. Others explain it 'inclined to dissipate the wealth of the family.' JÍMU'TAVA'HANA interprets it 'averse from performing their father's obsequies and other acts of religion.' According to the opinion inserted in the *Retnácara* as maintained by some lawyers, the precept for depriving a gamester, or other vicious person, of his share, must be understood as signifying the allotment of a share diminished by so much as has been dissipated. According to other commentators, men addicted to gaming and the like are not deprived of their shares, but men who follow an illegal profession. Such is the difference between these two opinions : but it must be noticed, that many authors acknowledge the exclusion of a man addicted to gaming and similar vices.

## CCCXVIII.

**SANC'HIA** and **LIC'HITA**:—OF him, who has been formally degraded, the right of inheritance, the funeral cake, and the libation of water, are extinct.

"FORMALLY degraded," expelled by his kinsmen, with the ceremony of kicking down a water-pot,\* for a crime *in the third degree*, such as killing a *Gshatriya* without malice, or the like.

The *Retnâcara*.

**JIMU'TAVA'HANA** explains "formally degraded," excluded from the joint libation of water. Both opinions coincide.

## CCCXIX.

**VRÏHASPATI**:—THOUGH born of a woman equal in class, one, who is not virtuous, shall have no claim to the paternal estate; it is ordained to devolve on those learned priests, who offer the funeral cake to the deceased.†

2. A SON redeems his father from every debt whatsoever due to superiour or inferiour beings; no advantage is therefore gained through one who neglects that duty.

3. WHAT can be done with that cow, which neither affords milk nor becomes pregnant? Of what use is that son, who is neither learned nor morally good?

4. A SON, who has no sacred knowledge, nor courage, nor industry, nor devotion, nor liberality, and who observes not immemorial good customs, must be considered as similar to urine and ordure.

"NOT virtuous" must be explained by the subsequent texts.

The *Retnâcara*.

\* See *Manu*, Chap. 11, v. 185.

† Also cited at v. CCLXIV.

It consequently signifies one destitute of good qualities, such as *the willingness* to discharge the debts of the father and the like. "Not virtuous" is explained by RAGHUNANDANA, 'tainted with those vices which are the reverse of good qualities.' That is wrong; for the sage, declaring useless a son devoid of good qualities, as described in the second text (CCCXIX 2), intimates, that he is incapable of inheritance. A text of NA'ARADA, bearing the same import, shall be cited.

By the word "though," the son of a woman unequal in class, and the substitute for a son, are assuredly excepted *in similar circumstances*. "Who offer the funeral cake to the deceased;" this phrase (*tat pindadāb*) is expounded in the *Retnācāra*, who give food and apparel to this man who is devoid of good qualities. The inheritance and other rights therefore devolve on learned priests: it is also mentioned, that food and apparel must be allowed to this son who is destitute of good qualities. "Learned priests" are mentioned illustratively; the term comprehends any person, who duly performs the obsequies and other constant and occasional rites. RAGHUNANDANA explains the term *tat pindadāb*, 'who offer the funeral cake to the deceased.' According to the *Retnācāra*, 'highest and lowest debts' should be expounded, "debts due to the superiour beings, such as deities, sages and progenitors, and those due to an inferiour being, namely man." According to HELA'YUDHA the same terms must be explained, debts to a creditor, which are naturally degrading. By declaring him to be useless, who neglects the duty mentioned in the text, that is, who wilfully omits to redeem his father, it is intimated, that he is incapable of inheritance; for the law declares him alone entitled to possess the heritage, who does confer benefits. The legislator mentions this, illustrating the principle by a simile (CCCXIX 3). "Learned" there signifies acquainted with right and wrong; "morally good" means practically virtuous. Here one, who is acquainted with right and wrong, is compared to a pregnant cow; one, who is practically virtuous, is compared to milch cattle. "Sacred knowledge, courage, and industry," (CCCXIX) severally relate to the three first classes; "devotion" and the rest concern all tribes. "Immemorial good customs;" the terms may be explained 'the practice of virtue to the utmost of his power.' "Must be considered as similar to urine and ordure;" as urine and feces are ejected through organs of  
action,\*

*essence*,\* so was he also ejected in the form of seminal juice. It follows therefore, that a son, even though free from vice, who neglects to fulfil prescribed duties to the utmost of his power, is excluded from participation: else it were vain to pronounce him useless. Vice *here* signifies malicious wrong to others and the like. May not the determinate sense of vice be here restricted to neglect of prescribed duties? Then the opinions of RAGHUNANDANA and the *Retnācāra* would accord. It should be noticed, that deficiency of good qualities, as a cause of exclusion, signifies the neglect of *fulfilling* indispensable duties at the proper time and place; the same term, as used in the chapter on sons of twelve descriptions, signifies neglect of voluntary acts of religion, which is a ground of inferiority in rank.

### CCCXX.

NA'REDA:—A PROFFESSED enemy to his own father, a degraded man, one deprived of virility, and a man formally expelled by his *kinsmen*, shall not inherit, though begotten by the deceased; much less, if begotten on his wife by a kinsman legally appointed:

2. One afflicted with an obstinate or an agonizing disease, and one insane, blind, or lame, from his birth, must be maintained by the family; but their sons may take the shares of their parents.

THE author of the *Pracāsa*, reading *upapātaci* (sinner in the third degree) instead of *apapātrita* (formally expelled), explains it guilty of crimes in the third degree. JĪMÚTAVA'HANA and RAGHUNANDANA read *apapātica*; that likewise signifies guilty of crimes in the third degree. In the *Calpateru*, the text is read *apapātrita*. The exclusion of one formally expelled or degraded by his kinsmen is expressly ordained in the text of SANC'HA and LIC'HITA. A sinner in the third degree is only excluded from participation, in the case of repeated offences: crimes are therefore mentioned in the plural number. Degradation for a single offence only takes place in the case of more heinous crimes. "A professed enemy to his own father;" this accords with VRĪHASPATI; for the exclusion of one, who wilfully omits the performance of obsequies and the like, is thus propounded. Though adorned with many virtues, such as liberality and the like, he is excluded from participation, if he refuse to perform obsequies and similar acts of piety. "Insane from his birth;" it is hereby intimated, that one, who subsequently becomes insane from the pernicious power of mineral drugs or the like, is not excluded, any more than one who subsequently becomes blind or lame. In the *Vṛvāda Cbintāmeni*, the text is read "idiot (*jaḍa*), insane, blind or lame" instead of "insane, blind or lame from his birth (*janma*):" "idiot" is there explained one who is incapable of discrimination. "But their sons shall take the shares of their parents;" consequently their sons shall participate as grandsons; or if these be also similarly circumstanced, their grandsons shall take the shares, as great grandsons of the deceased: but, if these be likewise similarly circumstanced, no argument is hinted to prove the right of their sons (*who are great great grandsons of the late proprietor*) to take the shares of their parents. However, the son of a degraded man shall not participate.

## CCCXXI.

DE'VALA:—ON the death of a father or other owner of property, neither an impotent man, nor a person afflicted with elephantiasis, nor a madman, nor an idiot, nor one born blind, nor one degraded for sin, nor the issue of a degraded man, nor a hypocrite or impostor\* shall take any share of his heritage.

\*The term is explained by some commentators "a fraudulent wearer of sacred marks"



2. FOR such men, except those degraded, let food and clothes be provided; and let the sons of such, as have sons, take the shares of their parents, if themselves have no similar disability.

“ ON the death of the father;” the meaning is, even on the death of the father. “ A hypocrite;” one, who rigidly practises austerities with an intent to deceive.

The *Retrâcara*.

OF course sons have no right to the property of their father, it would therefore be superfluous to say “ on his death;” hence the word “ even” is supplied.

A PERSON afflicted with elephantiasis, and who has not made expiation, is excluded from inheritance; but one, who has made atonement, shall take a share, since the sinful taint is removed; for that was the sole cause of his exclusion. This is accurate; and in like manner a person afflicted with marasmus is only excluded, if he have not made expiation. It should not be argued, that the disability of men tainted with sin is shown by the mention of persons degraded for their crimes: by the further mention of a “ person afflicted with elephantiasis,” it is intimated, that the disease is, in its own nature, a cause of exclusion from inheritance. RAGHUNANDANA holds, that expiation for a man afflicted with elephantiasis, or other similar disease, is ordained for the purpose of enabling him to perform acts of religion ordained in the *Vêda*; by parity of reasoning he becomes competent to inherit property, as well as to perform religious ceremonies: it is not found in any other case, that a son, competent to perform obsequies and other acts of religion, is not qualified to inherit. The leper is separately mentioned to deny his right of inheritance; which might be supposed because he is not a degraded person.

ALTHOUGH the sinful taint be diminished, is not a leper degraded, because the original crime was heinous? It should not be objected, that the body, in which the offence was committed, is alone tainted with sin, and the occupant

occupant of that body is alone degraded ; but the crime having been perpetrated in another body, the occupant of the present one is not degraded. There is no argument, by which this induction can be supported. To the question proposed, the answer is, degradation signifies that state, which occasions both disability for acts of religion ordained in the *Vēda*, and a *final* doom to misery in another world ; but leprosy does not occasion evil destiny in another world, nor does it cause disability for acts of religion : in fact, a man so tainted with sin ought not to undertake a religious rite, although elephantiasis and the like have not ensued.

Is not a known crime the sole cause of disqualification for acts of religion ? and hence they may be duly performed by one who is not conscious of a crime which he has fortuitously committed in his present existence. Again ; if leprosy be a cause of disqualification for religious ceremonies, why should it not occasion disability for inheritance ? As for the assertion, that, since the injunction of penance would otherwise be fruitless, he becomes equally capable of possessing property and of performing acts of religion (for there are no grounds of preference ; ) that is not accurate : for nothing opposes the assertion, that penance is undertaken lest leprosy or the like ensue in a future birth.

THE modern VA'CHESPATI BHATTA'CHĀ'RYA holds, that a crime in the first degree is inexpiable so far only as relates to the body, in which the crime was committed ; accordingly the observation of RAGHUNANDANA is accurate, that, since the cremation of a husband guilty, in his present state, of slaying a priest, is forbidden, one guilty of that crime in a preceding state is alone redeemed by his wife dying with him. If expiation were refused to all bodies occupied by one guilty of a crime in the first degree, then cremation would be denied to a man tainted with sin, even though it were committed in a former birth ; the observation of RAGHUNANDANA would be therefore inaccurate ; and a husband, guilty of slaying a priest in a preceding state, could not be purified by his wife dying with him. It should not be argued, that cremation is only permitted, when the degradation is unascertained, the crime committed in a preceding state being unknown ; but cremation is refused, when that is ascertained from elephantiasis or other token of

fin. As in the case of defilement, so, in the present instance, there is no argument for requiring *the previous ascertainment of the fact* it is not true, that if a man employ in the celebration of a sacrifice, one who has committed a crime in the first degree which is unknown, a sinful taint is not thereby contracted, for, when many persons take a repast in company, it is directed by sages that a line of separation be drawn with water, sand or the like, through fear of associating with a degraded man. Nor should it be argued, that this is not RAGHUNANDANA'S opinion, but his meaning is, that cremation is refused to one who is a known sinner, and no sinful taint is contracted, if a sacrifice be performed by the intervention of one guilty of slaying a priest, but whose crime is unknown, the practice of drawing a line of separation is founded on the apprehension of associating with one who conceals a crime of which he is guilty. Were it so, the expression "in a preceding state" would be unmeaning. As for the exposition, which might be proposed, "a crime committed in a preceding state, which is concealed, is a sin of a preceding state, and one known in this life is a sin of the present state," that is inadmissible; for it would be wrong to attribute to an author an implied meaning so ill justified. In like manner, adds VACHESPATI BHATTACHARYA, if the corpse of one, who has committed a crime which is unknown be burnt, those who burn the corpse, must be acknowledged to be guilty of an offence, as they are, if they burn the corpse of one who has concealed his sin.

\* THIS again does not hold good, a thing cannot be justified on the sole consideration of any author's assertion, without *support from reasoning, or from the express text of a legislator*, for the simple assertion of a commentator may be any how applied. For instance a priest is a human being endowed with strength, he is not slain by the simple imposition of hand or foot, without blow or wound, and that must be known hence, to suppose an unknown offence, it is necessary to revert to a former birth. It should not be objected, that no argument proves cremation to be forbidden then only when the sin is known, and consequently expiation is denied to that body alone by the occupant of which the crime was committed. To secure the effect of dying with a husband, namely atonement for the crime of one guilty of slaying a priest, as it is necessary (this being an occasional rite) that the occasion

of it be ascertained, so likewise in a prohibited case, the cause, being ascertained, ought to be considered as a sufficient ground for invalidating the act. This really occurs in the case of one, who takes a repast on the eleventh day of the moon, not being aware of the date. It should not be argued that no sin is committed by such unintentional breach of an enjoined fast. As merit is not gained by one, who abstains from food on the night of ŚIVA,\* without being aware of that rigorous fast, so a forbidden act, being done, produces the sin consequent on such act, although the cause why it should have been omitted were unknown. It is indeed declared, as an inference drawn from the texts of MENU and YAJÑAWALKYA, that, although a crime be unatoned, an act done ignorantly is valid, hence the cremation of one, whose crime was unatoned, is valid, but those, who burn his corpse, contract a sinful taint.

MENU —THE gods declared three pure things peculiar to *Brahmanas*, what has been defiled without their knowledge; what, in cases of doubt, they sprinkle with water, and what they commend with their speech.

YAJÑAWALKYA —WHAT is not known to have been defiled, is ever pure.

If it be said leprosy must also be affirmed to be a cause of disability for performing acts of religion ordained in the *Veda*, to disqualify one, who does not know, through his acquaintance with the law, that this leprosy proceeds from a crime formerly committed and, for the purpose of disqualifying one who is ignorant of the law, it is not necessary, that some person should tell him, "it is inferred from this leprosy, that a crime was committed by thee in a former state," then the answer is, admitting that leprosy is also a cause of disability, what difficulty follows? what prevents a sin, ascertained by leprosy or the like, becoming the cause of disability for performing acts of religion ordained in the *Veda*? VA'CHESPATI BHATTACHARYA, who contends, that atonement is denied to that body, in which a crime in the highest degree was committed, only admits, that a body infected with sanious leprosy, which is a token of a heinous crime, cannot obtain atonement. But, if

\* On the 14th lunar day of *Phalgun*

the sinful taint be removed, that consequence is obviated. The following text declares sanious leprosy to be the worst sort.

### CCCXXII.

*Bhawiṣya purāna*.—HEAR, O priest! the enumeration of *various sorts* of leprosy, the last worst than the first; blisters on the feet, a deformity in the generative organs,\* cutaneous fissures, true elephantiasis, ulcers, coppery blotches, black and eighthly white, leprosy :

3. Among these, that leper is most vile in respect of all religious acts, who is afflicted with ulcers on all his limbs, *especially* on his temples, forehead and nose ;
4. When he dies, let his corpse be cast near a sacred river or other holy place, or at the root of a sacred tree ; let not a funeral cake or libation of water be offered, nor his corpse be burnt, nor obsequies ~~be~~ celebrated :
5. Should a man, through affection, burn the corpse of a leper, who has been six, or even three months, infected with the disease, that man must perform the lunar penance of an anchorite.†

AMONG those lepers of eight sorts, he, who is incapacitated for all solemn rites, is described (this word must be supplied) as afflicted with ulcers in all his limbs, or on his temples, forehead, or nose. Since this is merely illustrative, he, who is infected with that foul leprosy, which is attended with ulcers on any other part of the body, is abominated and disqualified for all solemn rites. Or the term "on all his limbs" being employed by the same rule, by which two names for kine are used at once in a general and particular sense, the meaning is "on any part of the body, whether

\* See *MATV*, Chapter 11, v. 49. *Dātcherman*, the term, which occurs in the text, is explained as signifying the natural want of the foreskin.

† *MATV*, Chapter 11, v. 219.

the temples and the rest, or parts different therefrom' Or else the meaning may be, 'afflicted with ulcers on any one or more of all the parts of the body, or especially with those other ulcers called coppery, black, or white sores, on any one of the parts specified, namely the temples and the rest he, who is afflicted with any one of these diseases, is most abominated " A leper, who has been six, or even three months, infected with the disease &c " according to the first opinion, if lepers die, who had been six months afflicted with *one of* the other seven sorts, or three months infected with sanious leprosy, their bodies shall not be burnt, and, *if they live*, they become incapable of inheritance Or the meaning is, 'after three months, if the sanious leprosy spread over all the limbs, after six months, if it only invade the temples or the like.' Or the sense may be, 'after six months, if the sanious leprosy invade any part of the body in general, after three months, if it consist in a coppery sore or the like, which especially attacks the temples and other parts mentioned in the text'

. It is said, that, the sinful taint being removed after penance performed, the degradation of the leper would be set aside neither RAGHUNANDANA, nor SULOAPANI, have inferred from the separate mention of the leper, that his corpse shall not be burnt, although he had performed penance. The unsuitness for cremation after death being *thus* removed, he therefore becomes competent to perform acts of religion *during his life*, and, this being proved, his right of inheritance is likewise established by parity of reasoning and the leper is again expressly mentioned by the same rule, by which two names for kine are at once employed in a general and particular sense, since his degradation can only be inferred *by logical reasoning*, men of weak understanding would not readily apprehend it, the *leper is therefore separately mentioned* to assist ready apprehension The same must therefore be understood in respect of obstinate agonizing diseases (CCCXX) The opinion of RAGHUNANDANA and the rest cannot be impugned on the sole ground of the leper being separately named As for what is affirmed, that, although the sinful taint proceed from the murder of a priest or other heinous crime, it is diminished by long endurance, and is therefore no cause of degradation, and hence the leper is separately mentioned, because he cannot be in

cluded in the term "degraded man," (to which it should not be objected, that, although the sinful taint be diminished by long suffering, the nature of the taint remains *unaltered*, and RAGHUNANDANA is accurate in admitting, that bodies of men, who had black teeth or other corporeal marks of sin, must not be burnt. Were it so, it would be necessary to perform the penance of twelve years\*) that is wrong, for legislators have propounded penances *equivalent* to the suffering of such pains, as would be produced by that sinful taint, and in the interval, when much has been already suffered, a penance equivalent to such part as remains to be endured. "Degraded man" must be explained 'one who has done a criminal act' else, 'since the issue of an outcast' may be sufficiently described by the simple term "degraded," the expression "issue of a degraded man" would be superfluous. But this man (the leper) is not one who has done a criminal act; for it was not done by *him* his present body. If it be argued, that disability must be affirmed of him, who is tainted with the sin consequent on that act, lest the offender become capable of possessing *inherited* property when two days have elapsed after the murder of the priest or other crime committed, ~~since~~ the act itself is not of long duration, then the son of the leper would be also disqualified. Therefore the occupant of the body, by which a criminal act was committed, is alone disqualified by reason of the sinful taint arising from an act of the body; and the leper is separately mentioned, to suggest disability so long as the sinful taint remains, although he occupy a different body. Then a man, who has black teeth or the like, would be capable of inheritance and so forth, even though penance have not been performed; and, if this be deemed admissible, one, who is afflicted with slight elephantiasis, being disqualified, *though he be not* a greater sinner than one who has black teeth, would not this be an unjust disparity? By the word leper must be understood one infected with the famous kind, a man afflicted with slight leprosy, and one who has black teeth and the like, retain their right of inheritance and so forth accordingly the man, who is infected with a particular sort of leprosy, being alone described in the *Brahma-sūtra* as an abominated person (CCCXXII 3), the denial of cremation must be understood of him alone. It should not be objected, that a man infected with grievous leprosy is dis-

qualified under the authority of the text, although he have performed penance, since no argument exists, by which it can be proved, that the term "a person afflicted with elephantiasis" (CCCXXI) bears the secondary sense of "tainted with sin" If one, who laboured under the full taint of sin, regain his rights when he has performed penance, and one, who labours under the remains of such sinful taint, be disqualified, although he have performed penance, the disparity would be unjust. Not the disease, but the sin alone, is the cause of disability. This is stated on the authority of the opinion delivered by VA'CHESPATI BHATTA'CHARYA

ACCORDING TO RAGHUNANDANA, they, who have black teeth and the like, as well as he, who is afflicted with slight elephantiasis, (should penance be unperformed,) can neither be burnt *after their decease*, nor succeed to property *during their lives*, for these also are sinners in the first degree, and the text expresses,

### CCCXXIII

*Brahma purāna* — **LEPER**, who have committed crimes in the first degree, are considered as degraded persons.

Would not the son of a leper, born before the disease broke out, be disqualified as the issue of a degraded man? Say not, that is admissible; for it would be inconsistent with approved usage. Nor should it be affirmed, that in this place "degraded man" signifies one tainted with a sin in the first degree, but in the expression "issue of a degraded man" it signifies the occupant of that body whence the sinful act proceeded. There is no argument on which various senses can be established for the word "degraded" twice used in the same sentence (CCCXXI). If this be proposed, the answer is, no, for in both instances the term degraded relates to the occupant of that body, whence the sinful act proceeded. For this reason only is the leper separately mentioned and thus, after premising degradation (CCCXXIII), the cremation of outcasts being forbidden in the *Brahma purāna* (CCCXXIV), the cremation of lepers is consistently forbidden in the *Bhavisya purāna* (CCCXXII), as they are outcasts. Degradation there signifies the state of one guilty of a crime in the first degree and so forth. Consequently,  
cremation



cremation and the like being allowed to one who has performed penance, since he is no longer an outcast, the performance of prescribed acts of religion, such as obsequies and the like, is also deduced; and that being proved, his right of inheritance is also established.

## CCCXXIV.

*Brahme purāṇa*.—Of degraded persons, there shall be no cremation, nor funeral sacrifice, nor gathering of their bones.

By parity of reasoning, should not one, who has black teeth or the like, and by whom penance has not been performed, be incapable of inheritance but that is not declared by the text? His exclusion from inheritance is intimated by NAREDA (CCCXX-2). SĀTĀTĀPA has used the word "malady," which is synonymous with disease, as also signifying black teeth and other morbid changes.

## CCCXXV.

SĀTĀTĀPA:—THE morbid mark, proceeding from a heinous crime, is reproduced in seven successive births; the right of inheritance is obstructed by malady; but that is removed by the first or common penance and the like; \*

2. And so is leprosy, marasmus, gonorrhœa and dysentery.

ANY mark, proceeding from a heinous crime, is thus described as malady or disease. VIṢṆU also mentions black teeth as the mark of a sin in the first degree.

## CCCXXVI.

VIṢṆU:—THEY, who have suffered the pains experienced in hell and have passed through the reptile state, bear the marks of their yet unexpiated crimes in the human form; an atrocious sinner becomes leprous; the slayer of a priest is

\* *Grīh'ya*: MĒRṬ, Ch. 11, v. 209 and 212, (see also 125). The term very frequently occurs in that chapter, and is translated severe; but taken as the name of a particular form of penance, it seems to be the same with that of PRAJĀPATI.

afflicted with marasmus; a drinker of spirits has black teeth; a stealer of gold has whitlows on his nails; the violator of his preceptor's (*guru*) bed has a deformity in the generative organs. . . . .

IN the text of DE'VALA the word "elephantiasis" is illustrative of these *morbid charges*; for in texts, which will be quoted, it is expressed by the general term disease, or malady. Then a man afflicted by gonorrhœa, or dysentery, would be also disqualified? Gonorrhœa, dysentery and the rest, may also proceed from the pernicious effects of drugs; but, if they be ascertained to be the marks of an atrocious crime, or of sin in the highest degree, disability is admitted by the terms of the text of NA'KEDA (CCCXX 2) It is the same in the case of one who becomes insane in the course of his life. It should not be objected, that the special mention of him, who is afflicted with ulcers (CCCXXII 3), would be superfluous. The distinction is this, men afflicted with very slight elephantiasis and the like are competent to perform the constant rites; but one infected with grievous leprosy is not capable of performing them.

NAREDA. One degraded for sin is he who has slain priests, or committed some other atrocious crime, and who has not performed penance; *but on the contrary* is averse from it; for RAGHUNANDANA says, aversion from penance on the part of the fallen sinner contributes to the forfeiture of his right to his own property. His not being averse from penance contributes to his right in the paternal estate. But VACHESPATI BHATTACHARYA affirms; that aversion from penance is no cause of forfeiting his right in his own estate; penance, or other atonement, which legalizes his *claim to property*, can only be performed with money begged during his fallen state from his son or from some other person. It is not proper to affirm, that his property in wealth acquired during his fallen state is forfeited by reason of his degradation. A degraded sinner would be always compelled to rob for his subsistence. However, should the son, or other person, take the heritage and yet refuse to give money for the penance to be performed, he ought to be compelled to give it. According to his opinion, the matter is not in this case regulated by aversion from penance.

“THE issue of a degraded man,” issue born after the commission of the act, which is punished by degradation; for this agrees with the text of VISHNU (CCCXXVII). A hypocrite or *impostor* is explained in the *Retnâcara*, one who rigidly practises austerities with a fallacious intent.

#### CCCXXVII.

VISHNU, after premising the fallen sinner, the eunuch and the rest:—THE legitimate sons of these are sharers of the patrimony; but not the sons of a degraded man, born after the commission of the act, which is punished with degradation, nor those, who are procreated in the inverse order of the classes: their sons do not participate even in the property left by the paternal grandfather.

“Or these” persons above-mentioned, the legitimate sons (that is merely illustrative, for the eunuch can have no son of his body) are sharers: the sense must be so completed. The legislator excepts the offspring of an outcast; “but not the sons of a degraded man &c.” “Nor those, who are procreated

“ what is inconsistent with duty,” instead of *acarminah*, “ those who neglect their duties,” according to his opinion, persons addicted to gaming and the like are intended by that term. “ But not the degraded nor their issue,” thus excluding outcasts and their offspring from supplies even of food and apparel, it surely follows, that they are deprived of their shares

## CCCXVIX

MENU.—EUNUCHS and outcasts, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share of the heritage,

2. But it is just, that the heir, who knows his duty, should give all of them food and raiment *for life* without stint, according to the best of his power. He, who gives them nothing, sinks assuredly *to a region of punishment*.

3. If the eunuch and the rest should at any time desire to marry, and if ~~the~~ *the* wife of the eunuch should raise up a son to him by a man legally appointed, that son and the issue of such, as have children, shall be capable of inheriting.

“ PERSONS born blind by the mention of birth the legislator suggests the incurableness, not the origin, of the blindness. ‘ Idiot devoid of knowledge of himself and others ‘ By the mention of “ such as have lost the use of a limb, ’ persons lame or the like, who are disqualified for acts of religion ordained by revealed and immemorial law, are suggested. To all these namely to eunuchs and the rest, food and raiment must be given without stint as long as they live. “ If the eunuch and the rest “ should at any time desire to marry ’ this apposition is in the form called *bahubhi* not however connecting the attribute or proposition with each member of the compound term, for the eunuch is incapable of procreating offspring. But the author of the *Pratish* considers ‘ impotence ’ as determinately signifying incapacity of propagation, arising from a defect which may hereafter be removed. he does not therefore acknowledge the apposition to be the form of *bahubhi*, which connects not the attribute

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rized (CCXXXI), \* and BAUDHAYANA, has delivered a similar text (CCXXXVII) According to the author of the *Pracaśa*, this law (CCCXXIX 3) regards one who becomes impotent in the course of his life That is questionable, for, as one, who becomes blind in the course of his life, ought to share the heritage, so ought one, who becomes impotent As it is recorded in the *Blarata*, that ŚIC'HAN'DINI, daughter of DRUPADA, did espouse a wife † so it may likewise happen, that an eunuch, mistaken for a man, may contract a marriage Impotence is of two kinds the impotence of one, who is deprived of the generative organ, and the incapacity of doing the virile act, although the generative organ exist. The last is described by CATYA YANA

## CCCXXY

CATYA YANA — HE is called impotent, whose urine froths not, whose feces sink in water, and whose generative organ is deficient in erection or in seminal juices.

ALTHOUGH the eunuch and the first should not marry, they may adopt children, such as sons given and the rest, and therefore the phrase "if they should desire to marry" is exceptionable If the degraded sinner have a wife married before he became an outcast, the son of his wife or other male child adopted during his degradation and, the son of his body procreated before it, may claim shares of the heritage, as appears from texts of DEVALA and others above cited

## CCCXXXI

YAJNYAWALKYA — AN outcast, and his son, an eunuch, one lame, a madman, an idiot, one born blind, and he, who is afflicted by an incurable disease, must be maintained, without any allotment of shares.

\* The compiler has cited the commencement of another text in VIKRU's name I have made the reference to a similar text of VIṢṆU

† DRUPADA during his wife's pregnancy, vowed he would kill the child should it prove female; his wife to save her first imposed ŚIC'HAN'DINI on her husband for a son A fable is told of her exacting a dowry with a legless or benevolent gentleman

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“ His son,” procreated after his degradation “ An idiot,” one whose intellectual faculties are imbecile “ An incurable disease,” a hopeless leprosy and the like By this term “ and the like,” other persons, described by other sages as excluded from participation but entitled to maintenance, should be comprehended in this law

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The *Peinâcara*.



She should bear a son procreated by a kinsman, belongs to other ages : a reason is thereby assigned, why the widow shall not now inherit, if brothers be living.

THE succession of the brother, though a wife survive, and of the wife, though a brother survive, has been propounded by various legislators : hence a contradiction *arises*. It should not be argued, that they, who ordain the succession of the brother in preference to the wife, direct a maintenance for the widow, hence texts, which suggest her right, must intend by implication the allotment of a maintenance, for thus the precepts mutually coincide. It is expressly declared, that a wife has a right to the whole property left by her husband (CCCCVIII).

#### CCCCVI.

MENU:—If brethren, once divided and living again together as parceners, make a second partition, the shares must in that case be equal, and the first born shall have no right of deduction.

2. SHOULD the eldest or youngest of several brothers be deprived of his share *by a civil death on his entrance into the fourth order*, or should any one of them die, his *vested interest in a share* shall not wholly be lost,
3. But, if he leave neither son, nor wife, nor daughter, nor father, nor mother, his uterine brothers and sisters, and such brothers as were reunited after separation, shall assemble and divide his share equally.

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thers even though not reunited, and by his half brothers who were reunited with him, and a fourth part must be given, for their nuptials, to *such of his* uterine sisters, who had not already received a quarter of a share for that purpose and this allotment of a fourth part to a sister must be understood in the case, where the former distribution was made according to the number of mothers, each of whom had borne a son and a daughter. Such being the sense, brethren, reunited after separation, having thus recovered the right of inheritance (CCCCXXVI), claim the estate of him, who leaves no male issue, in preference to the widow, but she would succeed to the estate of one, who left no male issue, and who was not reunited with his brethren.

THAT is not acknowledged by JIMUTAVAHANA, for the text of VRĪHASPATI, expressed nearly in the same terms with that of MENU, shows that a brother, even though reunited, has no claim, if the wife survive, and JIMUTAVAHANA states many other objections, which are here omitted to avoid prolixity, for his purpose is attained by a single *et alii* objection.

#### CCCCVII

VRĪHASPATI.—If brothers, who have made a partition, become, through mutual affection, reunited, and again make a division of their joint-property, the first born has no right to a larger portion.

2. SHOULD any one of them die, or any how seclude himself from the world, his share shall not be lost, but devolve on his uterine brother,
3. But she, who is his sister, is next entitled to take the share: this law concerns him, who leaves no issue, nor wife, nor father, nor mother.

CULLĀCABHATTA also remarks on this text of MENU concerning a reunited brother, 'this must be considered as the rule, if he leave neither son, nor wife, nor father, nor mother.' But VACHESPATI MISRA affirms, that

all texts, which suggest the succession to others in preference to the wife, relate to the estate of an undivided brother, and the texts cited, which suggest her succession in preference to them, relate to the estate of a husband, who has made a partition with his brothers, for, if he die before the distribution, it cannot be affirmed, "this was the property of her husband, since all the brethren are joint owners of that wealth, the widow therefore can have no title. It should not be argued, that she may claim partition with the brothers of her husband and take his share. A distribution among brethren being permitted after the death of both their parents, an express law shows, that a brother, his son, grandson, and the rest shall receive shares (LXXIX), but no law declares, that the wife of a ~~deceased~~ brother shall in *every* case take an allotment. Nor should it be argued, that texts, which propound the right of the widow, establish her participation, since they cannot be otherwise pertinent. These texts may also relate to the inheritance of divided property, and may therefore be otherwise applied. Accordingly VASISHTHA is declared, that the widow of a childless brother may hold a share until she bear a son (CXVII). In fact, that allotment belongs to the *posthumous* son alone, but, if none be born, that share shall be received by, and distributed among, the brothers. Such is the meaning, for the words, "until they bear sons," would be otherwise unmeaning.

THIS again does not appear satisfactory, for the participation of the widow is deduced from the word "share" in the text of *Vridha Menu*. That term is not used in speaking of succession to an estate, which has been already divided, for it carries a reference to some entire property, and when this *share* is now inherited, there is no total of which it is part.

#### CCCCVIII

*Vridha Menu* — A WIDOW, who has no male issue, who keeps the bed of her lord inviolate, and who strictly performs the duties of widowhood, shall alone offer the cake at his obsequies, and succeed to his whole share.

merely maintained by her husband's brother and kinsmen, under the text of HA'RÍTA: but an adulteress shall be banished from the house, conformably with the precept of NA'REDA (CCCCV 2).

# CCCCIX.

HA'RÍTA:—A WOMAN, widowed and young, is untractable; but separate property must always be given to women, that they may pass their destined life.

SUCCESSION to heritage, in right of good qualities, ~~only~~, does actually occur in the case of adopted sons. Since a woman has not yet performed the duties of widowhood and the like, how can she have a title to the inheritance immediately after *the death of her husband*? She has an immediate title, because she is disposed to perform those duties; but afterwards, if her propensities happen to change, she forfeits the right, which she had fully possessed. "Young" is mentioned in the text of HA'RÍTA, as indicating the possibility of adultery. By youth, *that* age is not strictly meant; for any woman, though young, who is known to be well disposed, has the right of inheritance by universal consent. By the term "untractable" is suggested the neglect of the duties of widowhood. They consist in refraining from the leaf of betel, from unction, from eating off vessels of zinc (Book IV, v. CXXXIV), and from sleeping on a bed (CXXXV) and so forth, and in strict abstinence on the eleventh lunar day, and in other acts of mortification.

# CCCCX.

PAIṚ'HÍNASI:—THE effects of him, who leaves no male issue, go to his brother; on failure of brothers, his father and mother shall take *the heritage*, or his wife not distinguished by good qualities, his distant kinsman bearing the same family name, his pupil, or a fellow student in theology.

THE wife not eldest, that is, *not senior by her virtue, or, in other words*, not distinguished by good qualities, is heiress on failure of the father and mother; such is the sense of the text: and that concerns wealth acquired

by the man himself without using the property of his fire. The claim of a brother is prior to that of a father or mother, because he is first entitled to perform obsequies *for the deceased*. Brothers of the whole and half blood succeed in order according to the benefits conferred by them, but, although they are conferred in unequal degrees, among whole brothers, by an elder, and by a younger one, still, since there is no difference in the degree of benefit arising from the funeral cake offered by them in the double set of oblations, they do not succeed in order, but inherit jointly. The reason is this, an heir being sought for the estate of one, who has left no male issue, his brothers and his ~~parents~~ being proposed, both claims seem equal, (for these confer benefits by sharing the funeral cake offered in the double set of oblations, and by giving birth to him, and his brothers do so by presenting the single and double sets of oblations, which he was bound to offer, and by performing his obsequies,) admitting, therefore, the greater weight of rites relative to another world, his brothers shall inherit, like sons and the rest, before his father but his half brothers succeed after those of the whole blood, because they are not qualified to offer the *parvana* for his mother. Among uterine brothers, although an elder one be not competent to perform the obsequies of the deceased, if a younger brother exist, they have a joint title, because age and qualities are not considered in ~~the~~ claims to ~~this~~ inheritance else the same rule would exist in the succession of sons, for the eldest performs the obsequies of his father. This should also be understood in the case of half brothers. The order, in which a father and mother claim succession, shall be explained hereafter, and that order must be observed in this instance. But, if the property were acquired with supplies received from the father and the rest, the claim of parents precedes even that of a brother, as ordained by YA'JNYAWALCYA, because the benefit of aiding the acquisition of wealth is greater than any other; and because they are related in the first degree without an interval.

On failure of these, "the wife, not distinguished by good qualities, *shall* inherit" (CCCX). By this epithet, and under the text of YA'JNYAWALCYA (CCCXCVIII), she, who performs all the prescribed duties of widowhood, claims the succession before a brother.

THE expression "leaving no male issue," signifies 'leaving none male or female, the last term being understood. It consequently signifies 'leaving no son, nor virtuous wife, nor daughter.' In like manner, since the daughter's son precedes a brother in offering the funeral cake in the double set of oblations, since he performs the obsequies of the deceased in preference to the collateral kindred, and since the text of VRĪHASPATI propounds his title, the brother can only claim the succession after the daughter's son.

## CCCCXI

VRĪHASPATI —As she (the daughter) becomes owner of her father's estate, although kinsmen be living, so likewise her son is acknowledged to be the heir of the estate left by his mother and maternal grandfather.

CONSEQUENTLY the virtuous wife has the first claim to the wealth acquired by her husband, who has left no male issue, next, the daughter, after her the son of a daughter, in default of him, the uterine brother, on failure of such, one by a different mother, after these, the son of a whole brother, next, the son of a half brother, on failure of them, the mother, if she be dead, the father, if both be deceased, the wife possessing few good qualities but a mere maintenance shall be given by the heir to a widow wholly destitute of virtue on failure of a wife possessing few good qualities the succession devolves on distant kindred and the rest. The order, in which daughters succeed, may be seen under the proper head, and the authority, on which a brother's son takes the heritage, will also be found in its place.

THIS order of succession being established in the case of wealth acquired by a man himself, the very same sequence should be followed in the case of wealth acquired with supplies received from the father and the rest. However, the reversed order of father and brother, founded on the distinction of various sorts of property, should not in that case be adopted, but the order of succession, propounded by YAJÑAWALKYA and the rest, must, in such an instance, be followed, if the wealth were acquired with supplies received from



from the father and the rest: since a wife, possessing few good qualities, is not then considered as conferring any benefits, the order should not in that case be broken *to interpose her between the father and brother*. In whatever text it is ordained, that a mere competency for subsistence shall be given to the wife, it must be understood of one, devoid of good qualities. A wife possessing little virtue must likewise be supported by brothers and the rest; for the proprietor was bound to maintain her. As for the text of SANC'HA, it must be considered as apposite, when a father, or brother, takes the estate of his son, or brother. In the precept of DE'VALA (CCCCIV) order signifies the sequence which is of general notoriety; and that is found in the texts of VISHNU and the rest. CHANDE'SWARA thus expounds the law.

#### CCCCXII.

SANC'HA:—To the childless wives of brothers and of sons, strictly observing the conduct prescribed, their spiritual parent must allot mere food, and old garments which are not tattered.

BUT some add by way of supplement to the opinion of CHANDE'SWARA, that food and apparel must be given, under the text of SANC'HA, to the childless widow of a son or brother, by her father in law, her brother in law and the rest, who take the estate of her deceased lord: and such nearly is the practice as observed by certain persons. Thus he, who takes the estate of another, must give food to his widow and the rest, whether she be daughter in law or sister in law *of the heir*. If he cannot supply her maintenance, he must not take the estate of the deceased, so long as such a widow survive. But the allotment of food and apparel to both these widows is not always indispensable; for they are not enumerated in the text of MENU (Chap. VI, Sec. II, Art. I) *among persons who must be maintained at all events*. However, they should, if possible, be supported; for, since VRĪHASPATI, treating of the succession of widows (CCCXCIX), directs that she, who is first, by the text of MENU, in the order of succession to the estate of him who leaves no male issue, shall honour learned and unprotected persons and the rest, the same ought likewise to be established in the case of another heir.

THIS opinion of CHANDÉSWARA is strictly conformable with the *letter of the law*, but it contradicts the opinion of JIMUTAVALANA. On this head, the last mentioned author affirms, that the wife has a prior right, before brothers and the rest, to the property of him, who leaves no male issue, for the texts of YAJNYAWALKYA and VISHNU (CCCXCVIII and CCCXVIII) intend that order of succession. But the word "women," in the text above cited (CCCCV 3), relates to females, other than the *legal* wife of the deceased and these are never entitled to the whole estate of one, who leaves no son, for it is forbidden to distribute wealth "among women, ignorant men, or such as neglect their duties," and no special law ordains their succession as it does the inheritance of a wife and the rest. But a woman *legally* espoused, a daughter, and the rest do inherit, by a special law, the estate of him, who leaves no male issue, for they are not barred by the general precept

### CCCCXIII

WEALTH was conferred for the sake of defraying sacrifices ; therefore distribute it among honest persons, not among women, ignorant men, or such as neglect their duties.\*

ACCORDINGLY the king, who succeeds, on failure of all heirs, to the estate of any man except a *Brahmana*, must maintain the wife of the late proprietor, as ordained by NAREDA (CCCCV 3), for, in speaking of a legal wife, the eldest is meant. The seniority of wives is not regulated by age or good qualities, but by class (Book IV, v. XLVI). In ages, other than the *Calit*, marriages were contracted in various tribes, and sometimes with women of the four classes, in such a case, that wife, among three or four, who was equal in class with her husband, had precedence. Such is the order of seniority by class. If a *Brahmana* have not espoused a *Brahmani* woman, may not a *Chatriya*, or, on failure of her, a *Vaisya* be his eldest wife? Therefore does the legislator add, "to all such married men, the wives of the same class only (not wives of a different

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\* Cut & at length in other chapters but only partially quoted in this place. I insert it here, for a reason which will appear at the end of the first Section of Chapter IX.

" class by any means) must perform the duty of personal attendance, and  
 " the daily business relating to acts of religion" (Book IV, v. XLVII).

## CCCCXIV.

MENU:—For he, who foolishly causes those duties to be performed by any other than his wife of the same class, when she is near at hand, has been immemorially considered as a mere *Chandála* begotten on a *Bráhmānī*.

BUT it is consequently admitted, that, on failure of wives equal in class, those duties may be performed by one of another tribe: *however*, those acts, which may be done by his wife who sprung from a different class, must only be performed by one belonging to the tribe next below him. VISHNU declares it (Book IV, v. XLIX). Hence a *Bráhmānī* wife performs those duties for a *Bráhmāna*; on failure of her, the *Āśtriyá*, in the case of the utmost distress; but not his *Vais̥yí* or *Súdrá* wives, though actually espoused: such is the opinion of JI'MU'TAVA'HANA. Admitting, that *Vais̥yá* and *Súdrá* women may not assist him in the performance of religious duties, still what can oppose their seniority on failure of other wives superiour in class? This is objected by certain authors: still, however, no difficulty ensues; for, if a *Bráhmāna* have only espoused women of the commercial and servile tribes, the *Vais̥yá*, but not the *Súdrá*, may in that case inherit as his wife. But, if women of the four classes have been espoused, the *Āśtriyá* and the rest are entitled to maintenance only, because they are not *legal* wives\* in a *strict* sense. It should not be objected, that still the obligation on the king to maintain the inferior wives of the proprietor is not apposite, because the *legal* wife alone does, in that case, inherit the estate. If she be dead, or if the inheritance be refused by her, it may be necessary that *the other wives or concubines* should be maintained by the daughter, brother in law, or other heir, or *lastly* by the king. This may suffice on the subject of marriages contracted in the four classes; for they are now prohibited. It has been, however, noticed by JI'MU'TAVA'HANA to obviate the seeming contradiction between texts of legislators.

\* Throughout this gloss on v. CCCCV, *pate* is employed as signifying the first or legal wife; and *Āśtriyá*, as signifying any other wife inferior in rank.

CONSEQUENTLY the wife legally espoused is sole heiress of the estate of her lord, whether separated or undivided, whether reunited or remaining divided, although a daughter and the rest be living. But "wife" (*bhāryā*) in the text of DE'VALA signifies legal wife (*patni*); for it relates to the special case of the distinguished one. "Order," mentioned in that text (CCCCIV), alludes to the sequence propounded by YA'JNYAWALKYA and the rest. In the text of PAI'T'HINASI (CCCCX), the construction must be taken from remote terms; the eldest wife, or the father or mother, shall take the estate of him, who leaves no male issue; on failure of them, it goes to the brother. This precept of law is thus propounded by him. In no text ordaining the allotment of a competent maintenance, does the term legal wife (*patni*) occur. RAGHUNANDANA and the rest, following the opinion of HELA'YUDHA and the author of the *Galpateru*, thus reconcile the seeming contradiction. This alone is accurate.

IN following the opinion of CHANDÉSWARA, the practice of good men is infringed by admitting the prior claim of a brother; and that opinion contradicts the text of MENU (CCCCXXXIV). According to the interpretation of JIMU'TAVA'HANA, if a man die leaving two wives equal in class, the eldest alone has a right to his estate; for, on the concurrent texts of DASHA and VISHNU (Book IV, v. XLIX and LI), and by the law above cited, the term legal "wife" (*patni*) signifies her, who was married from a sense of duty.

MADANAPA'LA holds generally, that, among wives of all tribes a distribution shall be made as among sons of four classes. He adds, after the death of the woman, on failure of her own daughters and their male issue, the daughter of another wife of her husband shall succeed. Hence it appears to be his opinion, that, after the death of a woman, her heirs shall inherit the property. According to the interpretation of RAGHUNANDANA, JIMU'TAVA'HANA, MISRA and CHANDÉSWARA, the heirs of her husband claim the inheritance, a text cited under one title being explained as carrying an allusion to another; but, according to MADANAPA'LA, the same text being explained as confined to the title under which it is placed, the heirs of the wife take the heritage. This concise exposition may suffice.

On the point above noticed, the opinion of *JĪMUTA* *ĀHARA* cannot be set aside by that of *CHANDESWARA*, because they are equal in merit and defect. But some trifle must be given to disloyal wives. In like manner, it appears from the condition "strictly performing the duties of widowhood," that a mere competency for subsistence shall be allotted to women, who, though not guilty of adultery, do not strictly perform the duties of widowhood. Since a son devoid of good qualities is declared incapable of inheriting (*CCCXIX* 3 and 4), surely the same ought to be established, if a wife be destitute of virtue. But, if she perform some of the duties of widowhood, she has a title to the estate because she does not wholly fail in observing such duties.

the natural father of those children, in that event, should any of those sons of the wife die leaving no male issue, the text of PA'IT'HINASI is applicable to the case: and, in that instance, "parents" must be understood to signify the father and mother of his natural mother. A wife not eldest is in every case debarred by a brother and the rest. Or else this precept, "*the effects of the deceased go to his brother,*" relates to property acquired with supplies from that kinsman's estate.

ACCORDING to the opinion of JI'MU'TAVA'HANA, since the wife has an interest in the wealth of her husband during his life (CCCCXV), and since there is nothing to annul her property after his decease, how can her husband's brother and the rest, *in any instance*, have a claim to the estate? To this it is answered, no; for it is established that her property is actually lost by the lapse of her husband's right. Accordingly the property of the wife is devested even when the effects are given away by her lord. Those, who affirm, that the allotment of a share *to the mother*, when partition is made among sons,\* is founded on her ownership of the father's estate because she was his wife, accordingly contend, that a share of the distributed wealth must be allotted to a wife of the father, whether she have or have not a son, and whether partition be made before or after the death of the father. Accordingly BHAVADE'VA remarks on the succession of a widow, that a wife had a claim on the estate of her lord even during his life, by the texts of DATTA (CCCCXV); and, after his death, she shall have an equal share with her son, by the same authority (CCCCXV 2). Does it not consequently appear, that, according to the opinion of these lawyers, the wife of the proprietor shall receive a share from his brother and the rest, as she would from his son?

#### CCCCXV.

DATTA:—WEALTH is common to the married pair.†

2. AFTER the death of her lord, the mother shall have an equal share with her sons.

\* There has been singular inaccuracy in the quotation of texts concerning the shares of mothers; an important law, here quoted, is unnoticed by the compiler in its proper place;

† The mother of sons, making a partition after the death of their father, shall also take a share." T.

† I can no where find the text cited at full length; this much of it has been frequently quoted; but the author of it is here named for the first time: and he does not rank among legislators.

To the question thus proposed the answer is, the exigence of such secondary property is supplied by allotting a competency for subsistence; but an equal share is given by sons because she is, in respect of them, most venerable.

BUT the property of her husband, devolving on the wife *by the failure of nearer claimants*, descends after her death to the legal heirs of her husband, on the concurrent opinion of many authors.

## CCCCXVI.

VRĪHASPATI:—THOSE near or distant kinsmen, who, becoming her opponents, injure the property of a woman, let the king chastise with the punishment of a robber.

THE widow must defray the education and nuptials of an unmarried daughter. Such is the succession of a wife to the estate of him who leaves no male issue.

II. ON failure of her, the estate descends to the daughter, by the text of YAJÑAWALKYA (CCCXCVIII) and rule of VIṢṆU.

## CCCCXVII.

VIṢṆU:—THE wealth of him, who leaves no male issue, goes to his wife; on failure of her, to his daughter; if she be dead, to the son of a daughter; if there be no such grand-son, to the father; in his default, to the mother; on failure of her, to the brother; if he be dead, to the brother's sons: in default of these, to the remoter kinsman; on failure of kindred, to one descended from the original stock; if there be none such, to the fellow student; on failure of him, to the king, except the property of a *Brāhmaṇa*.\*

MENU and VRĪHASPATI propound the daughter's claim (CCX and

\* Partially quoted in this place. There are many various readings of this text. I here combine the readings most approved. T.

CCXXIV 1), the last named legislator declares what qualifications are required of a daughter, that she may inherit the estate of her father (CCXXIV 2). The order of succession, says BA'LARUPA, is, in this case, the same which is ordained by the text of PARA'SARA

### CCCCXVIII.

PARA'SARA:—THE unmarried daughter shall take the inheritance of the deceased, who left no male issue; and, on failure of her, the married daughter.

It should not be argued, that all this relates to the daughter who has been appointed to raise up issue for her father, and that the term "not appointed," in the text of VRĪHASPATI (CCXXIV 2), relates to her who is selected by an implied intention without a formal declaration. It is ordained by MENU, that, if a son exist, such a daughter shall have an equal share with him.

MISRA.

CONSEQUENTLY a daughter, though not appointed to raise up issue to her father, shall inherit, as appears from the terms, "him, who left no male issue." Are not those terms employed to show, that she takes the whole estate of him, who leaves no son born in lawful wedlock, for the texts, relating to the succession of a daughter, and of her son, are delivered by MENU among precepts relative to an appointed daughter? Since he has propounded no separate law concerning the claim of a daughter, these texts must be taken as intending by implication the succession of daughters in general. It should not be objected, that their right of inheritance is not ordained by codes of law. The text of YAJÑYAWALKYA, expressing "this rule, concerning the heritage of him who has gone to heaven leaving no male issue, extends to all classes" (CCCCXVIII 2), declares the succession of a daughter to the estate of him, who leaves no son begotten or adopted, neither one born in lawful wedlock, nor an appointed daughter or the like, and the text of VISHNU conveys the same implied sense. According to the opinion of those, who contend, that the son of the appointed daughter becomes the adoptive son of her father, there is no difference



ence whatsoever between an appointed daughter and any other female offspring. Neither can the terms "leaving no male issue" signify 'leaving no son properly so called'. Were it so, the wife and the rest would inherit in order, although a son of the wife begotten by a kinsman, or other adoptive son exist. Nor is that intended by lawgivers and commentators. This concise exposition may suffice.

On failure of unmarried daughters, a married one claims the heritage by the text of PARASARA above cited (CCCCXVIII). Such is the notion of JIMUTAVAHANA and many other authors. CHANDESWARA and the rest do not contradict that opinion, it should therefore be adopted. A distinction is admitted in respect of married daughters. She, who may possibly have a son and she, who actually has male issue shall alone take the inheritance, not she, who is barren or widowed. For the text of NAREDA shows, that daughters confer benefits through the means of their offspring, and precepts of MENU on the subject of inheritance declare the conferring of benefits to be the sole ground on which rests a title to take the heritage (CCCLXX and CCCCXXXIV).

#### CCCCXIX

NAREDA — If there be no son, the daughter is *heir* by parity of reason, for she keeps up the progeny, *since* a son and a daughter both continue the race of their father.

HERE progeny intends such descendants as give the funeral cake, for he, who does not offer it, conferring no benefit, is in nothing different from one who is not a descendant, or who is the offspring of another man. But a daughter's son is a giver of oblations, not his son, nor her daughter, for the funeral cake stops with him. So JIMUTAVAHANA, with whom DICSHITA concurs. Consequently, neither a daughter, whose son is dead, but who has a son's son, nor she, who has female issue, inherit, though they were not barren.

#### CCCCXX

DEVALA — To unmarried daughters a nuptial portion must be

be given out of the estate of the father; and his own daughter, lawfully begotten, shall take, like a son, the estate of him who leaves no male issue.

UNDER this text, the virgin daughter, by a woman equal in class and legally espoused, can alone claim the inheritance; not a daughter by a woman not legally espoused, nor one of a different class, nor one begotten on the wife by a kinsman, nor any other adoptive daughter; for sons begotten on a wife by a kinsman, and other adoptive sons, being noticed by the law, are alone legal issue; but such daughters, being unnoticed in codes of law, are not so. The same distinction should be also understood in respect of a married daughter, who would be debarred by an unmarried one.

ON this some lawyers remark, since the text of NA' REDA, which propounds *succession in right of* benefits conferred, is not cited by RAGHUNANDANA under the head of succession of female issue, therefore barren and widowed daughters inherit immediately after those who have or may have sons. This seems to be his opinion. It should not be asked, how can they claim the inheritance, since they confer no benefits? Were this a valid objection, it would contradict the assertion of JI'MU'TAVA'HANA and RAGHUNANDANA, when treating of succession to the several property of a woman, that barren and widowed daughters succeed on failure of others, because they also are issue of the mother. It should not be argued, that they inherit as issue of the mother, because a text, treating of succession to the several property of a woman, expresses, "if a married woman leave no issue, her husband shall take her property." Since the words "daughters" and "married" occur under this head, both may inherit as married women, and as daughters. It should not be objected, that the commentator has not expressly said, that barren and widowed daughters may claim the heritage in this instance, as he has said, that they succeed to the several property of their mother; he does not therefore admit the succession of barren and widowed daughters. Neither does he, like JI'MU'TAVA'HANA, affirm, that they do not inherit in certain cases; he may have left unnoticed the contrary assertion of a former author, although his own opinion admits their succession.

VĀHANA has variously discussed the subject. Since the appointment of a daughter to raise up issue for her father is now forbidden, the argument is not here inserted for fear of unnecessarily enlarging the book, but it may be thus abridged; if the appointed daughter die having borne no son, her wealth shall be taken by her sister and the rest, but, if she die after bearing a son who deceased, it shall be inherited by her husband and the rest.

AFTER the death of a daughter, by whom shall property, which goes to her, be taken? To this JĪMU'TAVA'HANA replies, if she was invested with the right while unmarried, and die after a subsequent marriage, it descends, on the failure of her, who was invested with the right, to those married daughters and so forth, on whom it would have devolved upon the original failure of an unmarried daughter never invested with the right; it does not descend to her husband and the rest, for that *succession* relates to the peculiar property of women. The meaning is, since it is shown by a text of law (CCCCXXVII 2), that, on failure of a wife invested with the right of *succession*, those heirs of the former owner, who are declared entitled to the inheritance on the original failure of a wife never invested with the title, namely a daughter and the rest, shall succeed to that property; the right of a daughter and of a daughter's son, who are inferior to a wife, is therefore proved by the rule, *that the greater includes the less*, exemplified by the staff and bread. Or wife is an indefinite term intending women in general; the same inference follows.

If they be inferior to a wife, as here affirmed, does it not follow, that the heirs of the original owner shall take the property after the death of the daughter's son, or even after the demise of the pupil and the rest? [Neither is this consistent with common sense, nor acknowledged by numerous other authors, nor conformable with logical reasoning; for no authentic text ordains it, and the son of a daughter's son ought not to be prevented from taking the estate of his father, the inheritance of which falls within the seven lawful means of acquiring wealth. Therefore does the commentator add, "or wife is an indefinite term" &c. Consequently the making apposite what was not pertinent in respect of wealth devolving on a wife and the rest, is continued in the last part of the *glōṣa*; apprehending a defect in the former, the commentator reconciles it in the latter exposition,

To this *forte* lawyers object the want of proof, that her own female issue, and the son of her sister, and other heirs of a daughter, can only claim the peculiar property of the woman ; for the texts of MENU and VRĪHASPATI (CCCCLXXXV and DXIII) ordain *generally* the succession of daughters and the rest to any property of their mother and so forth ; and, although restricted by the precept of CA'TYA|YANA (CCCCLXXVII 2), which numerous authors consider as relating to wealth which has devolved on the wife by failure of nearer heirs, still there is nothing to restrict those texts in other cases. Again ; if a daughter, a sister's son and others can only take the peculiar property of a woman, then, should wealth have been acquired by her mother, or by his mother's sister and the rest, in the practice of arts, commerce or the like, there would be no certainty who may claim it after the death of the acquirers. But this commentator admits the sole right of a woman to that, which she herself earns by arts or the like ; for he explains the text of MENU (Book III, Chapter I, v. LII 2) as merely implying her subjection to control ; and expounds " the dominion of her husband,"

of a term are in many instances admitted according to the difference of the subject? Then what is the definition of the term "peculiar property of a woman?" If it be explained *wealth received* on her account, excepting that which has devolved on her by failure of nearer heirs; what is the use of that exception, or whence is it deduced? Again, the observation, "wife is an indefinite term," is impertinent, for the word wife is not contained in the text (CCCCLXXVII 2), and there is no proof that it should be understood—it is only inferred from the correlative term husband. It should not be argued, that it does not follow from the insertion of the correlative term, that the wife of the late proprietor is intended, for it is not so shown in the maxim, 'preserving the bed of her lord inviolate, she may enjoy the estate of her son,' nor in other instances—neither can that be inferred from the words "gift or *heritage* (dāya) of her husband," which occur in the preceding text (CCCCLXXVII 2), for those terms, explained as signifying wealth given by her husband, might be repeated in interpreting the subsequent text, which would therefore relate to such gifts of her husband of course the word wife must be understood *not inferred*. This should not be argued, for, if some term must be understood, it may be woman, or some other equivalent word, and the subject, governed by the active term "enjoy," being sought, "gift of her husband" must be repeated from the preceding text, or "estate of her husband devolving on her" must be understood. Again, *this text does not convey a general maxim*, that a "woman shall enjoy the heritage," for sisters and and the rest might in that case obtain the estate left by a brother—it is merely an explanatory precept limiting the right to simple enjoyment, and this is founded on the text of another legislator expressing, "she shall only enjoy the estate, which has devolved on her by failure of nearer heirs, and not give it away or sell it." There is no proof, that wife here signifies woman in general. If it be said, a sufficient argument may be drawn from this reasoning, 'simple enjoyment being granted to a wife, who is first in the line of eventual succession to property devolving on collaterals the same is also proper in the case of other female heirs,' the last distinction would be superfluous, since it must be equally admitted, that a daughter's son, a pupil and the rest are likewise incapable of giving away or selling the estate—the wife is not first in the eventual succession.

to an estate, but the son alone is *first heir*; the law knows not any distinction between eventual and direct succession; this and the words, wealth devolving *on collaterals*, are used on some occasions by certain authors for the sake of their accepted sense: however, the term direct or *lineal* succession is employed for the purpose of *explaining, that the heir is subject to the control of his own son and the rest, in the disposal of wealth which has devolved on him as son, grandson, or remoter descendant of the former proprietor.* Therefore wealth devolving on a son or other *lineal* successor, and on a wife or *collateral* heir, must be called heritage, because it is obtained in right of affinity or relation. Thus, if the maxim be established, that a wife shall *simply* enjoy the estate, a question arising on the expression "after *demise*, the legal heirs shall take it;" after the death of the wife must be assumed, 'not after the *demise of any woman.*' This term here signifies a female human being; and wife denotes a married woman. By discussing the objections and answers on the insertion of these several terms, *and the consequent inferences,* the volume would be needlessly enlarged: both *the questions and the answers* are therefore omitted. But, though not directly supported by the text of any legislator, or concurrence of any commentator, the opinion delivered by JIMUTAVAHANA is respected by many lawyers. However, he only says, that wealth, which has devolved on a daughter, goes after her *death* to the heir of her father; he has not expressly affirmed, that a daughter shall not alienate an estate which has descended to her: but, if it be said, the general maxim, that, after a woman, the legal heirs of the former *real proprietor* take the estate, cannot be deduced without establishing a general rule, that a woman shall *merely* enjoy an estate which has devolved on her; it then follows, that such is his meaning, but not otherwise.

IF the daughters be numerous, a distribution is made. Such is their succession.

III. ON failure of female issue, the son of a daughter is heir, according to JĪMU'TAVA'HANA and RAGHUVANDANA. BHAVADE'VA, observing "daughters", expressed in the plural number in the text of YA'JNYAWALCYA (CCCXCVIII), and inferring the implied comprehension of daughters both *fruitful and sterile*, and of the daughter's son, because the plural number would otherwise be unmeaning, also *admits this succession*. The reasoning, approved by JĪMU'TAVA'HANA, is pertinent on this interpretation; for he pronounces both daughters capable of inheritance. The word, taken in a secondary sense, here intends both a daughter and her male offspring; as son, in the text of YA'JNYAWALCYA (CCCXCVIII 2), signifies *real issue, that is, a son, a son's son, and the son of such a grandson*. The sense is the same in the text of DE'VALA (CCCCIV). But the reading of the rule of VISHNU, immediately after the words 'on failure of her, to the daughter,' "if she be dead, to the son of a daughter" (CCCCXVII); is not acknowledged by JĪMU'TAVA'HANA; for he has not cited that part of the rule, under the head of succession of a daughter's son. That reading is approved by BHAVADE'VA. But the text of VISHNU, cited by GO'VINDA RA'JA, is universally acknowledged to be sufficient proof of the right of a daughter's son.

## CCCCXXI.

VISHNU:—ON failure of sons, and of their male issue, the sons of daughters shall obtain the property; for the male offspring of a son and of a daughter are equally qualified to perform obsequies for men of all classes.

CHANDE'SWARA also suggests the title of a daughter's son in preference to brothers, by citing the text of VRĪHASPATI, with these words premised, 'immediately after a daughter, and the son of a daughter.'

## CCCCXXII.

VRĪHASPATI:—ON failure of them, uterine brothers, and  
sons

sons of brothers, kinsmen bearing the same family name, pupils, and learned priests, are entitled to possess the estate.

FROM the difference of benefits conferred, and on the reason of the law, his title ought to take effect even before that of parents. The benefit conferred consists in the oblation of a funeral cake to the proprietor by the son of his daughter (CV). In respect of another world, the benefit conferred by parents consists in their sharing the funeral cake which should have been offered by the proprietor; but, in succession to heritage, procreation appears to constitute a superiour claim, compared with the acceptance of the funeral cake; and the oblation of it *does so, when* compared with procreation; for it is shown, that a son and the rest take the heritage, although a father, or other ancestor, be living.

“ ON failure of them,” that is, in default of a daughter and of a daughter’s son, mentioned in preceding texts, “ brothers” are the heirs. Such is the meaning; and this supposes the failure of parents, as will be hereafter explained. The preceding texts are two, one of VRĪHASPATI quoted in a former chapter (v. CCXXIV 2) and another (CCCGXI) cited by BHŌJA-DEVĀ with these words premised, “ VRĪHASPATI, on the succession of a daughter who is, or is not, appointed *to raise up issue to her father.*”



THEN the title of a son's grandson, whether in the male, or female line, may be supposed to precede that of both parents, by parity of reasoning, and because the text of VRĪHASPATI is nothing to the purpose. No; for this only declares the right of inheritance founded solely on benefits conferred; and the precept of VISHNU, cited by GOVINDA RAJA (CCCCXXI), is the ground on which rests the title of a daughter's son; and it is declared that he confers benefits (CV). It should not be argued, that the text of VISHNU relates to the son of an appointed daughter. The terms, "who leaves no son nor son's son" would be inexplicable. It cannot be true, that the son of an appointed daughter, though acknowledged to be a son's son in contemplation of law, claims the estate after the issue of a son begotten in lawful wedlock; for it is established, that his mother has a share *of the estate* at the same time with the son of the body (CCVI).

THUS the grandsons of a son, both in the male and female line, are not comprehended in the texts of YA'JNYAWALKYA and the rest, by taking the terms *of the precepts* in a secondary sense. Accordingly no ancient author has asserted the title of both to take the heritage.

As for the remark, that the texts of MENU, which are cited by JIMUTA'VANA to prove the right of a daughter's son (CCXXV & 4 & CCVII), relate to the son of an appointed daughter, because she is mentioned in the context; the right of a grandson in the female line must nevertheless be somehow deduced from the implied sense of these texts, to obviate disparagement of the legislator, since it has not been separately declared by MENU; like the expression "the sun is set" in speaking of ablutions at twilight, *and of other duties to be performed at the close of the day.*

THE learned do not positively hold, that, after the death of a daughter's son, the heirs of his maternal grandfather shall take the wealth which had devolved on him; but his son or other heir shall alone take that property.

AGAIN; if daughter's sons be numerous, a distribution must be made. In that case, if there be two sons of one daughter and three of another, five equal shares must be allotted; they shall not first divide the estate into

two parts, and afterwards allot one share to each son - for such a mode of distribution is only ordained in partition among the sons of sons, and the reasoning is not equal, for a son's son, whose own father is dead, receives a share from his uncle, but the daughter's son,\* whose mother is deceased, does not receive a share from his mother's sister.

As the daughter, begotten by a man himself on his wedded wife equal in class, is alone heiress of her father's estate by the text of DE'VALA (CCCCXX), so the son of such a daughter alone succeeds, as grandson, to the estate of his maternal grandfather. This also should be understood From the expression, " who leaves no son," it appears, that, on failure of appointed daughters, the right devolves on one, who has not been yet given in marriage, and hence also it must be understood, that the son of any daughter, though *she were* not appointed to raise up issue to her father, is heir.

BUT some lawyers contend, that a daughter's son can *only* claim the succession, on failure of all the heirs enumerated, *from the wife to the king* (CCCXCVIII), or, since there can hardly be a failure of the sovereign, in default of all those heirs preceding him That is wrong; for, immediately after *mentioning* the daughter's son, follows the text of VRĪHASPATI, " on failure of him, brothers &c" (CCCCXXII), and he does confer benefits. MADANAPĀ'LA also affirms the succession of a grandson in the female line, immediately after a daughter The right of inheritance does not solely follow the benefits conferred.

MISRA considers the texts of VRĪHASPATI and the rest as relating to the son of an appointed daughter, and he explains the precept of VISHNU also (CCCCXXI) as relating to the son of an appointed daughter and as intended to authorize his succession to the whole estate, like the text " all these adopted sons are pronounced heirs of a man who has no son by himself begotten" (CXC 3)

BUT GOVINDA RA'JA contends, that the claim of a grandson in the female line precedes even that of a daughter. It is wrong, for this grandson is secondary in comparison with the daughter, since he becomes the offspring

spring of *his grandfather* through her ; and her prior right is proved, because VRĪHASPATI compares her son's claim to her own (CCCCXI).

ON the death of a daughter's son, who has received the heritage of his maternal grandfather, his own son claims the estate, because it had become the property of his father, and because no express law resists his right. This should be noticed. Such is the succession of a daughter's son.

IV On failure of them, the mother is heiress by the text of YA'JNYAWALKYA (CCCXCVIII) thus the *Retnācara* and *Chintāmen*. It should not be argued, because the term "both parents" signifies father and mother, that both shall inherit jointly. The text of VISHNU propounds their successive rights, "on failure of her, (*namely, the widow of him who dies leaving no male issue,*) the wealth goes to his daughter, if she be dead (*and leave no son*), to the father, in his default, to the mother" (CCCCXVII). Accordingly VRĪHASPATI propounds the succession of the mother without reference to the father.

#### CCCCXXIII.

VRĪHASPATI —THE mother must be considered as heiress of her son, who dies leaving neither wife nor male issue ; or, with her consent, the brother *may be heir*.

HERE "with consent" signifies with the acquiescence of the mother. But the *Parjāta* expresses, the term is illustrative, comprehending the father. The meaning therefore is, 'with consent of both parents'. Of what use is the sanction of the father, for the same effect follows the assent of the mother, who had a right to the succession? That is wrong, for indirect acquiescence is here meant which may be expressed in these or other words, "I take it not" there is no occasion to suppose a *formal* declaration of consent in these words "do you take it".

MENU also declares, that the mother inherits (CCCCXXIV). The succession of the father on failure of her is intended by YA'JNYAWALKYA, as appears from his precept, and from the texts of VISHNU (CCCCXVII) and

A MOTHER surpasses a thousand fathers, for she bears and nourishes the child in her womb; therefore is a mother most venerable.

If the veneration due to her exceed the respect due to a father a thousand fold, how can the text, cited from the *Purāna* by MĀ'DHAVA'CHĀ'RYA, be relevant?

By law the father and the mother are two reverend parents of a man in this world; however adorable the goddesses of the earth, a mother is still more venerable:

2. But, of those two, the father is preeminent, because the seed is chiefly considered; on failure of him, the mother is most revered; after her, the eldest brother.

HE himself thus reconciles the seeming contradiction; this relates to a father, who gives instruction to his son in the whole *Vēda*, after performing the ceremonies on conception and all other holy rites which perfect the twice-born man: otherwise the mother is most venerable. Accordingly the text of MENU is also pertinent.

MENU:—A MERE *āchārya*, or a teacher of the *gāyatri* only, surpasses ten *upādhyāyas*; a father, a hundred such *āchāryas*; and a mother, a thousand natural fathers.

HE, who, for his livelihood, gives instruction in a part only of the *Veda* or in grammar and other *vēdaṅgas* and the like, is an *upādhyāya* or sublecturer, he, who girds the pupil with the sacrificial cord, and instructs him in the whole *Veda*, with the law of sacrifice, and the mysteries or sacred *upaniṣads*, is an *āchārya*. So MĀ'DHAVA'CHĀ'RYA following the text of MENU.\*

VYA'SA:—TEN months a mother bore her infant in her

\* Chapter 2, v 140 and 141.

womb, suffering extreme anguish; fainting with travail and various pangs, she brought forth her child;

2. Loving her sons more than her life, the tender mother is *justly* revered: who could' recite all her merits, even though he spoke a hundred years?

By citing other texts from the *Puranas*, the volume would be unnecessarily swelled, for this reason they are omitted. The seeming difficulty is thus reconciled, title to respect is no cause of inheritance were it so, who could take the estate, while both parents exist? But benefits conferred by his own act, and near relation by the funeral cake, *are the grounds, on which rests the claim of an heir* now the father is superiour by the benefits, which he confers therefore he has the right of succession even though the mother be living, and the reading approved by JIMUTAVAHANA must be followed in the text of VISHNU (CCCCXVII), for YAJNYAWALKYA declares, "If two texts differ, reason, or *that, which it best supports*, must in practice prevail, when the reason of the law can be *seen*."

BUT other lawyers argue, if the estate of a son devolve on his mother, while the father lives, still the latter has the sole right to it, for it is not her exclusive property, being different from gifts received before the nuptial fire, or at the bridal procession, or the like, and, while her husband lives, nothing is acknowledged to be her exclusive property, except that, which was given to her.

THE father is heir on failure of a daughter's son, and the mother, in default of the father the opinion of JIMUTAVAHANA and the rest is respected by many lawyers as that which should be now followed in practice

AFTER the death of a mother, who has inherited the estate of her son, the heirs of her peculiar property shall not take the succession, but the heirs of the son. So JIMUTAVAHANA It shall not be aliened by the mother in her life time this also is affirmed by the learned, to be the opinion of JIMUTAVAHANA MISRA also affirms, that she has no power to give away, or otherwise

otherwise aliene, property, which devolved on her *by failure of nearer heirs.*  
This lawyers affirm *to be a settled rule.*

V. ON failure of the mother, brothers *take the estate,*—by the texts of YA'JNYAWALCYA, VISHNU, VRĪHASPATI, MENU, GO'TAMA (who uses the word eldest as an illustrative term intending all brothers), DE'VALA and CA'TYA'YANA (CCCXCVIII, CCCCXVII, CCCCXXII, CCXXIII, CCCCIV & CCCCXXV).

GO'TAMA:—THE wealth of deceased brothers goes to the eldest *and the rest.*

#### CCCCXXV.

CA'TYA'YANA:—ON failure of male issue, the father shall take the estate acquired by his son after partition, or the brother, or the natural mother, or the paternal grandmother, in regular order.

HERE the order of succession, to which the texts of DE'VALA and CA'TYA'YANA allude, follows *the precepts of* YA'JNYAWALCYA and the rest. Such is the opinion of JĪMU'TAVA'HANA and others; CHANDE'SWARA also must be understood as assenting to that opinion: but MISRA, in expounding the text of CA'TYA'YANA, alleges a two fold established case, the father shall inherit what had been acquired by him, and the brother and the rest shall succeed to that, which had been gained by a collateral relation. On his interpretation it must be inquired, what shall become of property inherited from ancestors and so forth. CHANDE'SWARA infers from a text above cited (CCCCX), that, on failure of a wife distinguished by good qualities, of a daughter, and of a daughter's son, the brother is first heir of property, which he, who leaves no male issue, had himself acquired: in default of brothers, both parents; or, if those be dead the wife not distinguished by good qualities and so forth. But JĪMU'TAVA'HANA and the rest affirm, that, on failure of the wife, daughter, and daughter's son, the father, mother, and brothers, in order, take every sort of property.

IN the text of YA'JNYAWALCYA, the term being exhibited in the plural number, it is thereby suggested, that brothers variously distinguished have a right of inheritance. Although their relation might be considered as single, in as much as it is the affinity of a brother, it is nevertheless distinguished into many sorts, to intimate their successive titles. That order of succession is subjoined, in the first place, a reunited brother by the same mother shall take the estate of one, who leaves no male issue; on failure of such, the uterine brother not reunited, and the reunited one by a different mother, have equal claims, in default of them, the half brother who is not reunited. So RAGHUNANDANA and JI'MU'TAVA'HANA. The proofs are subjoined.

JI'MU'TAVA'HANA expressly says, in collateral succession, the uterine brother has the first claim, as declared by the text, "an uterine brother shall transmit and receive the heritage to and from his uterine brother, as he happens to live or die."

#### CCCCXXVI.\*

YA'JNYAWALCYA:—Two brothers, who, after their forisfiliation, have both reunited themselves to the family of their father, shall reciprocally transmit and receive their estates, as they happen to live or die; and so shall two uterine brothers.\*

CONSEQUENTLY YA'JNYAWALCYA, having propounded in general terms the succession of brothers, whether by different mothers, or by the same, whether reunited or not (CCCLCVIII), subjoins this text for the sake of exhibiting a distinction, by virtue of which, if a single brother have both claims, as related by the whole blood and as reunited, he bars all the rest. The share of one reunited brother, who deceases, another reunited one shall receive, and so forth, but a whole brother, not one by the same father only, shall alone receive the share of a reunited brother by the same mother. A similar opinion is delivered in the *Dīpācalica*.

\* This version of the text is extracted from a manuscript of Sir WILLIAM JONES. It is variously explained in the subsequent annotations. T

## CCCCXXVII.

**CA'TYA'YANA :—**ON failure of nearer claimants, reunited brothers must be considered as heirs of those, who are reunited, and disunited brothers of those, who are disunited; *for they reciprocally share the estates if they have no progeny.*

BROTHERS, who are not reunited, take not the shares of those, who die after reunion; but disunited brothers must be considered as heirs of those, who die disunited: "on failure of nearer claimants," that is, in default of a wife and the rest. The last terms of the text are joined in the apposition called *duandwa*. So CHANDE'SWARA. These terms are added to show the reason *of the precept*; the meaning therefore is, 'because they are competent to take each other's shares, when they have no issue:' this also some lawyers affirm. By expressing in general terms, that reunited brothers are heirs of their coparceners, it is intimated, that a reunited brother of the whole blood succeeds to the exclusion of one, who remains separate. VA'CHESPATI MISRA also observes, that uterine brothers, who are not reunited, do not take the heritage. Consequently, if there be whole brothers, one of whom is, and the other is not, a coparcener, the reunited brother by the same mother has the sole right of succession by consent of many authors.

BUT if two reunited brothers, one by the same, the other by a different mother, claim the succession, what is the rule in that case? To this CHANDE'SWARA replies, the meaning of the text (CCCCXXVI) is this: on the competition of brothers of the whole and half blood, the whole brother shall alone take the estate. Accordingly,

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**Vrihat MENU :—**IF a brother by the same mother be living, one by a different mother shall not take the estate; the law is the same even though it be immoveable property; but, on failure of the whole brother, one of the half blood may indeed possess the estate.



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THIS is reasonable; for it is said by JĪMU'RAVĀHANA, if one have two claims, as brother by the same mother and as reunited, he bars all other claimants; therefore the reunited brother of the whole blood is sole heir to the estate of the deceased; but, on failure of him, the disunited brother by the same, and reunited one by a different, mother, have equal claims; because one is brother of the whole blood, though disunited; the other reunited, though brother of the half blood: and CHANDE'SWARA remarks, 'thus it is shown, that relation by the whole blood is a ground, on which even a disunited brother may take the inheritance;' since there are arguments, on which both may claim the succession, it is therefore declared, that both shall inherit: and MĪSRA observes, 'a brother by a different mother, having reunited himself to the family, shall take the estate of his half brother; but not unless he reunite himself:' an uterine one, however, may take the inheritance, even though he do not reunite himself to the family (interpreting the text by connecting remote terms). The following precept is explicit.

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YAJNYAWALKYA:—A BROTHER by a different mother, if he return after partition to the family, not any other half brother, shall inherit the estate; but a whole brother, even without returning, shall succeed to it, not a *disunited* half brother by the same father only, *except on failure of the rest*.

had not returned to the family. Since an order of succession is not mentioned, these two shall succeed together; and a partition shall therefore take place between them. On failure of uterine brothers, the legislator adds, "not a half brother by the same father only;" that is, one, who is not reunited, shall not take the estate. Hence, if there be half brothers, one of whom is, and the other is not, reunited, the disunited half brother is not heir. The equal claim of a reunited half brother with a reunited whole brother had been already denied, the equal claim of a disunited half brother with a reunited half brother is now denied; there is consequently no vain repetition. Such is the interpretation approved by CHANDESWARA. MISRA says, the last terms of the text are a mere repetition.

ON the reading of the second measure *nānyōderyō d'hanam harēt*, the construction is, 'a half brother, who is not reunited, shall not inherit the estate.' JIMUTAVĀHANA thus expounds the text; a half brother, being reunited, shall take the estate, not a disunited one; whole brother is repeated from the preceding text (CCCCXXVI); 'but a whole brother, even though not reunited, shall succeed, not solely the reunited half brother.'

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BUT others thus comment on both texts of YA'JNYAWALKYA (CCCCXXVI and CCCCXXIX); if there be whole brothers, some of whom are, and others are not, reunited, the legislator says, "a reunited brother shall take the heritage of a reunited one;" if the whole brothers remain separate, he says, "an uterine brother shall take the heritage of an uterine one," In that case, if there be a reunited half brother what shall be the consequence? The legislator replies, "a brother by a different mother, if he return after partition to the family, shall take the estate." Since both have claims to the succession, they shall inherit equally: but a half brother, who had not reunited himself, shall not succeed; thus the lawgiver declares, "not any other half brother." If a uterine and a half brother have returned to the family, what shall be done in that case? To remove the doubt whether both shall inherit under the vague expression of the text "a reunited brother shall inherit the estate of a reunited one" (CCCCXXVI), the legislator says, "the reunited half brother by the same father only shall not take the inheritance" (CCCCXXIX).

SOME lawyers affirm, that reunion of parceners is not a ground of succession; for, were it so, it might be supposed, that a son, who is owner of separate wealth, and a brother's son, would not jointly inherit the property possessed by a paternal uncle reunited with his nephew. On the contrary, inheritance positively rests on other claims. Thus, succession in right of fraternity being established, *the reunion of one* bars any other brother. In like manner, if there be a whole brother not reunited, since he alone has a claim in right of affinity by the whole blood, he alone shall inherit; not a half brother, even though reunited. Thus the text above cited (CCCCXXVI) relates to uterine brothers only; and the legislator denies the claim of a half brother in the subsequent text (CCCCXXIX); "a brother by a different mother, whether reunited or not, shall not inherit the estate of his half brother" (*reading the text nānyōderyadhanam harét*): but on failure of uterine brothers, the legislator adds, "a reunited *half* brother, not any other half brother by the same father only, shall inherit the estate."

THAT is wrong; since it contradicts all *respected* authors, and is inconsistent with the reason of the law; for why should not reunion be a cause of a brother's succession, as well as relation by the whole blood? If it be said, since a son, a wife, and the rest confer benefits on the proprietor in another world, there is no parity between that claim and one founded on reunion; but a uterine brother confers benefits by offering the double set of oblations for the mother; *the answer is*, a reunited brother also defrays religious ceremonies by means of *his* property thrown into parcenary. On failure either of a disunited whole brother, or of a reunited half brother, the other is heir; in the one case, if there be half brothers, one of whom is, and the other is not, reunited, the reunited brother has the sole right to the inheritance, not the disunited one; for the text of YAJNYAWALKYA expresses, "a reunited brother shall receive the estate of a reunited one" (CCCCXXVI). On failure of both these *prior claimants*, a disunited brother by a different mother shall inherit, because he also is brother by the same father. Since a mother also claims the funeral cake and other oblations, which are given by an uterine brother in the *śrāddha* performed with a double set of oblations (CCCCXCVI), the whole brother is superior to one by a different mother, because he offers the double set of oblations for the mother of the

late proprietor since two brothers living in the same house, afford reciprocal support, preserve each others property, confer mutual benefits by the acquisition of wealth, and respectively earn religious merit at the expense of wealth acquired by each other, they are nearer the one to the other, than a disunited brother

Who is called a reunited parcener? He is thus defined by VRĪHASPATI,

CCCCXX

VRĪHASPATI.—HE is said to be “reunited,” who, having made a partition, lives again, through affection, with joint property, in the same house with his father, his brother, or his paternal uncle.

AFTER brothers have made a partition by mutual consent, when any one of them lives *again* with a certain other brother, these two are *said to be* reunited. Their dwelling together is not simply a residence in the same house or abode (for that may happen even without affection, when the habitations are not equally numerous with the brothers), but it consists in forming one household and their intentions are thus declared, “what is thy property is mine,” their effects are thus intermixt “the duties of us both shall be the same,” an agreement for community of duties is thus made in like manner *one is made for common fare* and this is deduced from the insertion of the terms “through affection,” else this word would be superfluous, since they could not dwell one moment together without affection but now such particular regard is suggested by that term

“In the same house,” in the same household Consequently two brothers, again living together, through mutual affection, as joint housekeepers, after having made a partition, are called reunited parceners Such is the meaning, and the text is so interpreted by RAGHUNANDANA, JIMUTAVAHANA, VACHESPATI MISRA, and the rest

WHEN the owners of several property live together as joint housekeepers, making a common stock of their fortunes, they are said to be reunited, for

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this



this is an early *interpretation* not making a common stock of their fortunes after partition, for this would be a *burdensome condition*. Some become owners of several property by partition, others are naturally so. Thus union founded on affection may take place between two persons sprung from different families natives even of different countries. This some lawyers affirm. It is wrong, for such united persons are no where seen, and the terms of the text, "having made a partition" would be unmeaning, and it is improper to consider any term as *nearly superfluous*, which may become pertinent accordingly a burdensome condition cannot be imputed as a fault. Reunion consists in dwelling together as joint housekeepers, after making a joint stock subsequent to partition. It should not be argued, that partners in trade, living together after a distribution of wealth gained by commerce, would be called reunited. Partition signifies distribution of heritage. Such being the case, may not the sons of two sisters be reunited, for they may happen to live together in the same household, after a partition of the property left by the maternal grandfather and the rest? Her tag here signifies wealth inherited in the direct male line such is the meaning, as appears from the terms of the text, "with his father, his brother or his paternal uncle." They alone are determinately meant, who were not separate by their birth. Of these, the father is first mentioned as the distributor of the estate when it is divided in his lifetime, the term, taken comprehensively, includes also the paternal grandfather and great grandfather the brother is next mentioned as the distributor of shares among brothers and lastly the paternal uncle is named, as the person, who distributes an estate shared with a son's son, whose own father is dead, the term, taken comprehensively, includes the son and grandson of a paternal uncle, and the great uncle and others the wife of a brother and the rest are not meant, because they are subject to the control of their husbands and so forth. Among those only does reunion take place, not among others but the practice of returning to coparcenary, after partition, with the son of a paternal uncle does exist as remarked by CHANDESWARA. It should be here noticed, that, if two brothers die after dividing the estate, the reunion of their sons or grandsons is not consistent with the obvious sense of the law, because he, who made a partition, does not in this case return to a common dwelling. Such is the opinion of MISRA and CHANDESWARA.

JÍMU'TAVA'HANA likewise holds, that they only, who may be coparceners by birth (in respect of property acquired by a father, brother, paternal uncle and the rest), having made a partition, are reunited by dwelling together in the same house as joint housekeepers, after annulling the former partition, through mutual affection, by a declaration in this form, "thy wealth is mine; and that, which is mine, is thine." There is no reunion of any other persons, such as partners in trade, by the simple junction of property.

HERE the son or other *male* descendants of a paternal uncle are comprehended in the term "and the rest," as appears to have been understood by SRI' CRISHNA TERCA'LANCA'RA; for he has remarked on the words "by birth," that the mother is thereby excluded, because her claim to property arises from marriage. Else the commentator would have said, 'the mother is excluded, because she is not *found* among the persons enumerated, namely the father, brother and uncle.'

BUT RAGHUNANDANA affirms, that reunion only takes place between father and son, between brothers, or between paternal uncle and nephew. In effect he considers the term "and the rest," in the remark of JÍMU'TAVA'HANA, as comprehending only the son and nephew. JÍMU'TAVA'HANA again observes, when treating of the shares of reunited parceners, "reunion should not be admitted among others besides those who are expressly mentioned, else the enumeration would be unmeaning." The author of the *Pracáśa*, after citing the text, adds, this is a positive precept. *However*, the opinion of CHANDE'SWARA and the rest is consistent with the reason of the law; for there is no difference whatsoever, whether the paternal uncle or his son be the distributor. But the opinion of RAGHUNANDANA and of the author of the *Pracáśa* follows the letter of the text. This should be examined, and one opinion only should be established.

AMONG four brothers, if two be separated, and two remain undivided, but the effects be distributed by arithmetical computation or the like; for example, ten *suvernas* out of twenty have been allotted to two brothers, and five a-piece to the other two; or if land or the like have been similarly distributed; in that case,

case, should one of the two undivided brothers die, leaving no son or other near heir, by whom shall the effects, assignable for his share, be taken? Not by the uterine brother in so much reunited, for he is not so in the *strict sense of the term*, since reunion consists in living together after partition with an agreement in this form, "what is thy property, is mine; and what is my property, is thine," but in this case partition had not taken place between those two coheirs. Nor shall all the surviving brothers by the same mother take *the lapsed share*; for that would contradict common sense it is difficult to find a reason, why a reunited parcener shall alone inherit when brothers live together after partition, and all the brothers succeed when some of them live together without ever making a partition. In administrative justice the letter of the law must not be solely followed. If it be said, partition by common consent of all the brothers is authorized by *express* ordinances, but the law has not indicated partition among some of the coheirs, and coparcenary of others, and no special rule of decision has been delivered on this point, no such partition ought therefore to be made. *the answer is*, if certain *Sûtras* or the like, not having given the codes of law, make such a partition, a rule of decision becomes necessary. Nor is that distribution void, for it has been made by the free consent of all the coheirs, and no special law forbids it.

To this, lawyers reply, the expression, "having made partition," does not intend a division reciprocally granted, but any distribution, whether accepted, or made, by both the parceners, between whom reunion takes place. Consequently two brothers have in this case a single allotment, the others have *separate* shares. partition therefore takes effect even in regard to those two, and they afterwards live together as joint housekeepers. It should not be objected, that the word "again" becomes irrelevant, because they do not twice live together. Since the literal sense of that term is burdensome, and there is no occasion to distinguish the shares, when reunion takes place, the word must be taken in a *secondary sense*. But other lawyers affirm, that an undivided heir, as well as a reunited one, excludes a divided heir in the silence of the law this must be established by reasoning

In fact a distribution is in such a case made among all the coheirs, by an act of the mind; accordingly, the portion of an eldest son, the best house and

and the like are allotted. In its consequences there is no difference. This brief exposition may suffice.

UNDER the text above cited (CCCCXXVI), shall not one reunited brother take the vested share of another, even though he leave a son, a wife, or other near heir? No; for VRIHASPATI denies it (CCCCVII) "Or seclude himself from the world" (CCCCVII 2), the particle has a connective sense alluding to degradation and the like. "It devolves on his uterine brother," consequently, if brothers by the same and by different mothers had reunited themselves with the deceased, the uterine brother has the sole right of succession, but a reunited one by a different mother, and an uterine brother *not reunited*, have an equal claim both these inferences are here justified. "To her, who is his sister, a share must be given" (CCCCVII 3) to defray her nuptials as already explained. "Such is the law concerning him, who leaves no issue" (CCCCVII 3), neither a son, a son's son, nor the son of such a grandson, nor a daughter, nor the son of a daughter. "nor leaves a wife, nor father nor mother;" that is, no wife endowed with good qualities as above mentioned, the word mother is understood, having been regularly dropped by the rules of etymology. It follows, that a difference arises from the reunion of parceners in collateral succession only, but the claim of reunited brothers is not stronger than that of a wife and the rest.

THE texts of MENU (CCCCVI), bearing the same import with those of VRIHASPATI above cited, must relate to a reunited brother, who leaves no son, nor wife, nor other near heir. CULLUCABHATTA concurs in this opinion. "His uterine brothers" (CCCCVI 3); by repeating *the 2d* reunited, this relates to the uterine brothers who have returned to coparcenary and the term is also taken in a general sense consequently, if brothers by the same and by different mothers, had reunited themselves with the deceased, the uterine brother is sole heir, but, if he have not returned to coparcenary, he has an equal title with the reunited brother by a different mother. This sense is deduced *fr. the text*.

"Such brothers as were reunited;" that is, half brothers, for uterine

Kindred had been already mentioned: by the word "reunited," such brothers, not having returned to the family, are excluded. "And sisters;" this relates to the allotment of a sufficient sum to defray their nuptials. As for the remark of CULLU'CABHATTA, that uterine brothers and sisters shall assemble and divide equally the vested share of their uterine brother, it must be affirmed that his meaning is the same: he cannot intend, that their rights shall be equal; for it is nowhere seen, that sisters inherit the property of their brothers; and the text is well explained as relating to the allotment of a sufficient sum to defray their nuptials. As for another observation of CULLU'CABHATTA, that, among brothers by the same and by different mothers, they alone, who use the same furniture and utensils, having made a common stock of their several effects, shall divide his share, not all the brothers by the same or by different mothers: here also his meaning must be understood to be the same. Reunited brothers by a different mother inherit only on failure of a reunited one by the same mother.

"UTERINE sisters" not given in marriage; they afterwards belong to the family of their husbands. So the *Pracāsa* cited in the *Ratnācara*.

#### CCCCXXXI.

**YAMA:**—IMMOVEABLE undivided property shall be the heritage of all the brothers, *be their mothers the same or different*; but immoveable property, when divided, shall on no account be inherited by the sons of the same father only.

THE meaning therefore is, 'all brothers, whether sons of the same father and mother, or of the same father only.'

JIMU'TAVA'HANA.

If any immoveable property of divided heirs, common to brothers by different mothers, have remained undivided, being held in coparcenary, the half brothers shall have equal shares with the rest; but the uterine brother has the sole right to divided property moveable or immoveable. The text of *Vṛibat* MENTU likewise intimates the same, by alluding to a distinction

in respect of immoveable property, when the subject proposed was already ascertained by the former part of the text (CCCCXXVIII). This maxim, say lawyers, should be likewise adduced in the case where no reunion has taken place.

EVEN a son given, provided he be virtuous, is *considered as* allied by the whole blood, if he were accepted by the mother of the son born in lawful wedlock; but, if not adopted by her, he is *considered as* a half brother; for in the case of a son given and the rest, adoption is acknowledged to be equivalent to procreation.

ON the death of one, who has received the inheritance of his brother, his own son or other heir claims the succession, not the son of any other brother; for he has no lien on the property of his uncle, the estate having already devolved on a collateral relation. Such is the succession of brothers.

VI. ON failure of them, the son of a brother is heir, by the texts of YA'JNYAWALKYA and VISHNU (CCCXCVIII, CCCCXVII); and because he offers two funeral cakes to ancestors of the late proprietor, one to his father, the other to his paternal grandfather. A brother's son has not an equal claim with a brother; for VISHNU says, "if he be dead, it goes to the brother's son;" and "he" must relate to the nearest term "brother:" and YA'JNYAWALKYA intimates, that, in default of brothers, their sons inherit, by saying, "on failure of the first of these, the next in order shares the estate:" and a brother, who is the giver of six funeral cakes, or of three (*if he be son of the same father only*), which it was incumbent on the late proprietor to offer, is superiour to the brother's son, who is giver of two funeral cakes which the late proprietor was bound to present to his father and paternal grandfather. JI'MU'TAVA'HANA concurs herein. As for the assertion, that the son of a living brother does not inherit, merely because he confers no benefits, since he does not offer the funeral cakes, that is futile; for it might be thus supposed, that the son of another deceased brother would inherit *in preference to his uncle*; and you must admit, that, on failure of other brothers, the son of a living but degraded brother does inherit: assuming the natural claim of a nephew, whose father is alive, like that of a daughter's son, whose parent

parent is living, he might have a right of succession. Neither can it be affirmed, that the paternal uncle ought to have an equal claim with the brother's son, because he offers funeral cakes to the paternal grandfather and great grandfather of the late proprietor. The brother's son has a superiour claim, because he presents an oblation to the *late proprietor's* father, who is the person chiefly considered. Thus JI'MU'TAVA'HANA. The father is indeed pre-eminent; because a man has no right to perform a *śrāddha* for his paternal grandfather or other ancestor, unless he have a right to perform one for his sire; and the father is nearest of kin to the *late proprietor*.

HERE again a distinction must be admitted; the son of an uterine brother has the first claim, because he confers benefits on the mother of the late proprietor; for it appears from a text cited by JI'MU'TAVA'HANA, RAGHU-NANDANA and the rest (CCCCXXXII), that the father's natural mother also shares with her husband the funeral cake offered by a son's son; but those benefits cannot be conferred by the sons of half brothers: *however*, on failure of other nephews, the son of a half brother may inherit.

#### CCCCXXXII.

THE mother shares with her husband obsequies solemnly performed by his son; the paternal grandmother, with her husband; and the mother of the paternal grandfather, with her's.

If any one nephew be reunited, shall he alone take the whole, or shall he share it with all the sons of brothers? It should not be argued, that a brother's son, being reunited, has the sole right of succession, by the general maxim above cited (CCCCXXVI). That text being propounded in the course of treating upon the succession of brothers, must be taken specially, as relating solely, to that subject. Such being the case, it was vain to mention the reunion of a nephew with his paternal uncle: this should not be affirmed. They are all mentioned to authorize that reunion, because they thereby become similar to undivided coheirs by having common duties and common income and expense. MENU and VYASARATI have only ordained the *preferable* claim of a reunited brother; and no legislator has expressly

previously declared the title of a reunited uncle or nephew. As for the text of NAREDA (CCCCXXIII), that also, from its coincidence with the precept of VĪṢṢASPATI, must be considered as relating to the same subject

## CCCCXXIII.

NAREDA.—THE *vested* share of reunited brothers is declared to belong exclusively to them, in any other case than this, they shall not *exclusively* share the inheritance of the deceased, it shall go to other brothers, when no issue is left.

THAT, which is the vested share of reunited brothers, belongs exclusively to them, in any other case, that is, if the deceased were not reunited, they, who were, shall not share the inheritance, that is, they shall not take the entire allotment of the deceased. Then who shall receive that share? The legislator replies, "it shall go to others" that is, to other brothers. Or the sense may be, 'in any other case, that is, on failure of reunited brothers, it shall go to others not *naturally* entitled to partake of the share,' that is, to other brothers. Share here signifies the property or inheritance, the natural partakers of it are obviously the sons, it goes to others, that is, to brothers. Or the sense may be, 'when half brothers are reunited, such reunited brothers by different mothers may inherit from each other, in any other case, that is, if they be not reunited, half brothers do not share the inheritance, but it shall go to others, namely to the full brothers. CHANDESWARA says, the meaning is this, in any other case, that is, on failure of reunited brothers, it shall go to others not *first* entitled to share the inheritance, or who do not claim the succession in right of reunion. But the author of the *Pracasa* thus expounds the text, "than this" alludes to something understood, namely to the case of one who leaves no male issue, in any other instance, that is, if he do leave male issue, the reunited brothers shall not share the inheritance but, when they die childless it shall go to others, namely to brothers and the rest. The mention of reunion is solely intended for the succession of brothers, hence it is not specially considered in the case of a brother's son. If this be affirmed, it may be answered, the author of the *Dispacalica* does not concur in that opinion, for, in expounding the text of YAJÑAWALKYA (CCCCXXVI) he



subjoins the term "or other parcener" after the word "brother," and delivers this gloss; the share of a brother or other parcener dying after reunion, another reunited brother or coheir shall take. Consequently the maxim must be established on the sense conveyed by the phrase, "a reunited parcener shall receive the vested share of a reunited one" (CCCCXXVI): and that sense may be thus expressed; the reunited coheir alone shall take the estate, if there be others related in the same degree but not reunited: it exhibits an exception to the general rule of inheritance deduced from another text. Thus, if a father, having made a partition among his sons in his lifetime, and becoming reunited with any one of them, die after the lapse of a few days; in that case, the reunited son, and no other, shall inherit his property. Accordingly MISRA affirms, that, in the case of reunion between parent and child, the reunited son alone, not the disunited one, obtains the share of his father, although another separated son be living; for it is declared without reservation, that a reunited parcener receives the inheritance from a reunited one; and the reunion of father and son has been also propounded by a text above cited (CCCXXX). What is thus affirmed by him, is alone just; for the claim of other sons on the property of their father was annulled by partition, and the right of the reunited son was revived by reunion.

It must be here inquired; how the remark, that their property is annulled by partition, can be apposite; for, while the father lived, the son had no right to his wealth before the distribution of it; and the text of YAJNYA-WALKYA (XCII) merely implies, that partition of an estate inherited from the paternal grandfather may be made at the will of the son: even admitting the literal sense of that text, sons could never have a claim on the wealth acquired by the father himself.

In saying 'the right of sons was annulled by partition,' the meaning is this; the son naturally had a claim on the property of his father by birth alone, under the rule of GO'TAMA (Chap. I, Sec. I, Art. 1); but not being then independent, while the father was living, since the text of CA'TYA-YANA expresses, "a son becomes independent after the death of both his parents" (Book II, Chap. IV, v. XV 5), he had no title to *claim* partition

or the like; but after the death of his father, he has such a right; this is declared by DE'VALA in these terms, "they have not ownership while a faultless father lives" (V); that is, they have not independent dominion, although they have a proprietary right; it is not said in the law, YA'J-  
 NYADATTA has not ownership of the property of DE'VADATTA: nor is a son destitute of right to the paternal estate, while his mother survives: consequently such a title only is annulled by partition: if it be said, this is the meaning intimated by VA'CHESPATI MISRA, the answer is, that opinion is not confirmed by JIMU'TAVA'HANA and the rest: were it even admitted by them, it would not be here affirmed; for, if a father, having made a partition with his sons, die after reuniting himself with any other parcener whomsoever, *it would follow, that his property could not be inherited by the divided sons; but no other persons ought to take the succession while sons live, since none can, like them, have a present right to his property.*

THE commentator observes, 'it should not be affirmed, that it is not so, because the text contains an exception, "this law concerns him, who leaves no issue" (CCCCVII); for that relates to a son born after partition.' To this again it may be objected, that the word "this," occurring in the text of the legislator, must, if possible, be referred to the law propounded by him, *that is, to the claim of a reunited brother by the same mother on the property of a reunited one, and to the succession of a disunited brother by the same mother, on failure of such reunited brothers, propounded in the text immediately preceding it; not to a distinction founded on reunion, for VR'IHAS-PATI has not, like YA'JNYAWALCYA (CCCCXXVI), noticed such a distinction.* It is improper to reject, without sufficient cause, the law promulged by the legislator himself, and assume one propounded by another author as intended by the word "this:" and there is no proof that the expression, "his share shall devolve on his uterine brother," should be explained as signifying generally the right of any one reunited parcener to inherit the property of another. In like manner, there is no argument to prove, that the terms, "who leaves no male issue," relate to a son born after partition. Hence this text (CCCCXXVI) is intended to propound a distinction founded on reunion, when there is a competition of heirs related in the same degree; the reunited parcener alone shall therefore take the heritage, if there be whole brothers, or half brothers, or paternal

paternal uncles, or others as near of kin to the deceased: for no distinction is found in that phrase; and the preceding text related to all *reunited parceners*; and a question may arise on *the claims of all*. Hence it should not be admitted, that this text relates to brothers only. So JI'MU'TAVA'HANA and RAGHUNANDANA. The words "and the rest" being inserted in the expression, "paternal uncles and the rest," many lawyers thus state the opinion of JI'MU'TAVA'HANA; a son might be here comprehended under the terms "and the rest," but that is not elegant; for, since he has precedence above all other heirs, he ought to be first mentioned: or the son of a paternal uncle and the rest might be comprehended, but that is not the opinion of RAGHUNANDANA. Yet in fact both ought to be included conformably with *the sentiments of MISRA and CHANDE'SWARA*. On the death of him, who, having made a partition, reunited himself with his paternal uncle, in preference to his own brother, would not the brother and paternal uncle have equal claims? If it be said, they are not related in the same degree; *the answer is*, the same might be supposed of brothers by one or more mothers. To the question proposed, the answer is, they have not equal claims; for the title of brothers in right of fraternity is alone propounded by the text (CCCCXXVIII).

WE resume the subject. The right of a nephew or other parcener who has returned to the family being thus proved, the reunited son of an uterine brother has the first claim: on failure of him, such a son of a half brother and the disunited son of a whole brother have equal claims; on failure of either of them, the other is heir: if there be neither one nor the other of these claimants, the disunited son of a half brother is heir. In respect of immoveable undivided property, no author has said, that nephews of the whole and half blood have equal claims by parity of reasoning, as in the case of brothers; and the text of the legislator is not explicit on this point.

HAS the son of a reunited brother a special title or not? There is no law on this subject; nor is the son of a reunited parcener acknowledged to be so himself, for there is no proof of it. If he be not considered as a reunited coheir, the right of deduction in favour of the eldest might be supposed when he makes a partition with his paternal uncle; for the text (CCCCVII) only denies the right of the first born, when partition is made among reunited parceners.

parceners. Nor should this be deemed admissible ; for it is inconsistent with the reason of the law. Admitting that he is not a reunited coheir, still he is an undivided one ; and as such, he ought therefore, by parity of reasoning, to take the heritage, like a reunited parcener, although separated coheirs be living. When this is demonstrated, then the son of a reunited parcener, so long as partition be not made, shall take the heritage, although separated coheirs be living, who are equally near of kin to the deceased. Accordingly, if two of four brothers have not made a partition, the property of one undivided brother shall devolve on the other : in like manner, if a man have made a partition with his children, and a son, born afterwards, die leaving male issue, such a grandson alone shall inherit the property of his paternal grandfather ; not the son with whom partition had been already made, nor his male descendant. Some authors thus expound the law.

BUT in fact, since it is only declared, that a reunited parcener shall alone take the inheritance, the undivided coheir shall not succeed *in preference to others*: in the case of four brothers above stated, it is admitted that two remaining in coparcenary shall be considered as reunited after partition ; for shares must be allotted to all, that the portions may be made equal as required by the law before cited (XXXIX 1). The son born after partition is sole heir of the whole property left by the father, under a text above quoted (C) ; but no law is found, by which his son shall become sole heir. What share shall he receive ? If he may take the allotment, which was due to his father, under a text formerly cited (LXXIX), the remainder of the paternal estate was the due allotment of his father ; and he shall therefore obtain it. To the question thus proposed the answer is, he shall take so much as would have been the share of his father, *supposing him not to have been transcendently virtuous*. It should not be objected, that the sons of those, with whom partition was formerly made, would not only take the shares formerly allotted, but also receive part of the wealth reserved by the paternal grandfather, whilst the son of a son born after partition would only receive a share of the wealth so reserved by his grandfire ; which would be an unjust disparity. It must unavoidably be admitted : without express authority of law, no inference can be established from *apparent* disparity. Other authors contend, that



and by the funeral cake ; consequently he, who is nearest of kin to the late proprietor by birth and by the funeral cake, and who is most immediately connected both by descent and, by oblations, shall take the property. It should not be objected, whence is this deduced ; and why is not proximity to the deceased proprietor solely propounded ? Nearness of kin is not the sole cause of succession, but connexion by the funeral cake does also cooperate ; and hence it appears that the benefits conferred are the grounds of the claim : now the benefits conferred by the nearest of kin, are more important, than those afforded by one who is more distantly related ; remote kindred ought therefore to inherit only on failure of nearer kinsmen. Thus, since the son of a daughter confers benefits by the oblation of a funeral cake, and since it is recorded in the *Mahábhárata*, that even his birth alone is beneficial to his maternal grandfather (CV), therefore the son of a daughter, conferring benefits on her father, is mentioned by *Jí'mu'tava'hana*, as heir, on failure of the great grandson in the male line. The order of *succession* by nearness of kin is proximate to the proprietor himself. Hence a person, who confers benefits on the last possessor himself, is first heir ; after him, the father of the late proprietor, being most near ; if he be dead, the persons who confer benefits on the father, in the order of proximity to him ; on failure of these, the paternal grandfather and the rest comparatively near ; on failure of the ancestor, he, who confers benefits on him. Accordingly the brother is sole heir, although a nephew, capable of performing obsequies, be living ; for the brother is nearest to the father. It should not be objected, that the son, as well as the father, is most near to the late proprietor ; and the great grandson of that son, conferring benefits on him, might therefore claim the inheritance. He does not afford those benefits, which the late proprietor was bound to confer on his ancestors.

SUCH being the case, is not the separate specification of the brother's son superfluous, since he is also suggested by the mention of kinsmen sprung from the same original stock ? Nor should it be answered, that he is separately mentioned for the sake of exhibiting a distinction, because there are various sorts of brothers and nephews. Were it so, the paternal uncle ought likewise to be separately mentioned, because that is equally true of him. To the question thus proposed, the answer is, no ; for the brother is heir on failure of  
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the father, and the nephew, in default of brothers; thus succession follows the order of proximity, that is, the course of benefits conferred on the nearest of kin: it does not follow such an order of proximity by which the paternal grandfather would be *first* heir on failure of the father; nor has the paternal uncle an equal claim with a brother's son: he is therefore separately mentioned for the sake of showing the order of succession in right of proximity by birth and the like, and for the purpose of denying a concurrent title of three descendants of the father, like that of three descendants of the proprietor himself, namely his son, and his grandson and great grandson *whose father and paternal grandfather are deceased*. Consequently, on failure of nearer claimants including the daughter's son, the father is heir; in default of him, the mother; after her, the brothers; if they be dead, a brother's son; next a brother's grandson in the male line; and after him, the son of the father's daughter: such is the path indicated by JĪMU'TAVA'HANA. But SRĪ CRĪSHNA TERCA'LANCA'RA, author of a commentary on his treatise, contends on the reason of the law, that the son of a son's daughter and the son of a grandson's daughter also claim the inheritance because they confer benefits on their maternal great grandfather and on the father of a maternal great grandmother. How can a daughter's son and the rest be considered as kinsmen sprung from the same original stock? Because the term is used in the sense of race or lineage *any* *breed* descending therefrom; and the son of a daughter mediately springs from that stock. It should not be objected, that, were it so, a sister and the rest might claim the inheritance, because they confer benefits by means of their son or other descendant. Their claim is obviated by a text above cited (CCCCXIII) and by BAUDHA'YANA declaring women to be in general incapable of inheritance: this does not contradict the right of wives and the rest, which is propounded by special texts. So JĪMU'TAVA'HANA.

In the succession of brother's sons, a distinction between the whole and half blood must be understood; not in the case of daughter's sons. But some lawyers consider it as the opinion of JĪMU'TAVA'HANA, that, in the succession of the sons of the father's daughters and so forth, a distinction is taken between uterine and half sisters. Herein SRĪ CRĪSHNA TERCA'LANCA'RA does not acquiesce; because no law is found *expressly* declaring the participation of a maternal grandmother in the funeral cake offered to the

the maternal grandfather. Thus, on failure of the father's issue including daughters, the paternal grandfather is heir to the property because he is nearest to the deceased; on failure of him, the paternal grandmother, such being the order of succession deduced from the text of MENU (CCCCXXIV) and from her participation in the funeral cake offered by her son's son (CCCCXXXII);\* and the reasoning holds good, that, as a mother succeeds on failure of the father, so shall the paternal grandmother succeed in default of the paternal grandfather. On failure of them, their issue including the son of a daughter shall inherit; and in the succession of the paternal grandfather's son, grandson, and great grandson, the same distinction must be admitted, as before, in respect of their relation to the *late proprietor's* father by the whole or half blood, because the paternal grandmother shares the funeral cakes offered by her descendants, and the wife of a paternal grandfather does not share the oblations presented by the descendants of another wife of her husband; but no distinction is taken in the case of daughter's sons, because the maternal grandmother does not share the funeral cake offered by her daughter's son.

NEXT, on failure of issue of the paternal grandfather, including his daughter's son, the paternal great grandfather is heir; in default of him, the paternal great grandmother, because she shares the funeral cake offered by her great grandson. This observation of JÍMU'TAVA'HANA and RAGHUNANDANA should be respected. It must not be argued, that, in the want of an express law, her succession is forbidden by the general maxim above cited (CCCCXIII). A man should not affirm of his own authority, that no such special ordinance exists; for the ocean of the law has not been traversed. On failure of her, the descendants of the paternal great grandfather, including his daughter's son as before, successively claim the inheritance. Here again a distinction must be admitted in the succession of the paternal great grandfather's son, son's son, and grandson's son, according to their relation to the paternal grandfather by the whole or half blood; but not in the instance of his daughter's son. Such is the succession of kinsmen sprung from the same original stock.

VIII. ON failure of them, a more distant kinsman is heir, by the text of YA'JNYAWALKYA (CCCXCVIII). In default of issue of the paternal

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great grandfather, including his daughter's son, the maternal grandfather and the rest, who would have shared the funeral cakes which the deceased would have been bound to offer, and they, who present funeral cakes to such ancestors, inherit in the order of proximity; namely the maternal grandfather, the maternal uncle, his son, and son's son, the maternal great grandfather, his son, son's son, and grandson's son, the father of the maternal great grandmother, his son, son's son, and grandson's son on failure of the first respectively, the next in order is heir. Again, their daughter's sons have a title as givers of funeral cakes to the maternal grandfather, to his father, and to the father of this maternal great grandfather consequently, on failure of issue of the maternal grandfather including his daughter's son, the descendants of the maternal great grandfather, also including his daughter's son, successively take the inheritance In this sense does YA'JNYAWALCYA use the term kindred Such is the rule approved by SRI CRISHNA TERCA'LANCA RA, who follows the opinion of JI'MU'TAVA'HANA.

ON failure of the giver of a funeral cake to be shared by the deceased, and in default of a son of the father's daughter, who gives three funeral cakes which the deceased was bound to offer to his own father and the rest, and so forth, the maternal uncle and others, who present oblations, which the deceased was bound to offer to his maternal grandfather and the rest, claim the inheritance in the order of proximity

JI'MU'TAVA'HANA

It should be here remarked, that the son of a son's and of a grandson's daughter, and the son of a brother's and of a nephew's daughter, and so forth, claim succession, in the order of proximity, before the maternal grandfather; for they also confer benefits by the oblation of funeral cakes It must not be objected, that, were it so, the son of a granddaughter would have a prior title, even though the father be living, in as much as he gives a funeral cake to the deceased himself The oblations, presented to the maternal grandfather and the rest, are secondary, because they must follow funeral cakes offered to paternal ancestors, the son of a granddaughter can have no claim while the giver or sharer of a principal oblation exists Nor should it be objected as a consequence, that the son

son of the late proprietor's daughter or of his father's daughter, and so forth, could have no title, if any kinsman within the degree of a *śapinda* were living. The *Mahābhārata* showing, that a daughter's son procures advantage even by his birth alone (CV), it appears that he does confer important benefits. SRI' CRISHNA TERCA'LANCA'RA concedes to this opinion. Such is the succession of maternal kindred.

IX. ON failure of them, a distant kinsman allied by family (*śaculya*) is heir by the text of MENU (CCCCXXXIV). "A kinsman of the same family" is the father of the paternal great grandfather, and his issue, and so forth, and is called *śamānōdaca*: such kinsmen claim the inheritance in the order exhibited. So JI'MU'TAVA'HANA.

THEY, who are partakers of the rice and clarified butter wiped off the hand, with which the funeral cakes have been offered, are *śaculyas*: such is the meaning. JI'MU'TAVA'HANA expounds the text of BA'UDHAYANA (CCCXCVII), three persons ascending from the father of the paternal great grandfather, and three descending from the son of the great grandson, do not participate in the same funeral cake, and are therefore pronounced kinsmen allied by family and sharing divided oblations.

It should be noticed, that, among the *śapindas* rendered impure by reason of a dead kinsman, three are also considered as such in respect of inheritance, and three as *śaculyas*.

#### CCCCXXXV.

THE fourth person and the rest share the remains of the oblation wiped off *with* *cuśa* *grafs*; the father and the rest share the funeral cakes; the seventh person is the giver of oblations: the relation of *śapindas*, or men connected by the funeral cake, extends *therefore* to the seventh person, or *sixth degree of ascent or descent*.

. In the first place, the son of the great grandson is heir, because he offers the remains of the funeral cake to the proprietor, to his father, and

and to his grandfather; next the grandson of the great grandson, and after him, the great grandson of the great grandson in the male line; on failure of these, the paternal grandfather's paternal grandfather, because he *would have* shared the remains of the funeral cake wiped off by the proprietor for the sake of ancestors; if he be dead, his son, and other descendant to the third degree, have successive claims; on failure of these, the daughter's son of the paternal grandfather's paternal grandfather, and other givers of a funeral cake in the triple set of oblations, inherit in order; in default of them, the son, grandson and great grandson of the great grandson of the grandfather's grandfather in the male line have successive claims as givers of the remains of funeral cakes to the paternal grandfather's paternal grandfather; on failure of them, the paternal great grandfather's paternal grandfather is heir; if he be dead, his son, grandson, or great grandson in the male line, his daughter's son, the son of the great grandson in the male line, and the son of that great grandson's son, *and the son of this last mentioned descendant*, have successive claims as before; on failure of them, the paternal great grandfather's paternal great grandfather, his son, grandson, and great grandson, his daughter's son, the son, grandson, and great grandson of his great grandson, similarly inherit in order; on failure of all these, the *śamánóḍakas* or persons connected by an equal oblation of water, have a right to the inheritance: now the relation of *śamánóḍakas* extends to the fourteenth person, by the following text.

## CCCCXXXVI.

BUT the relation of *śamánóḍakas*, or those connected by an equal oblation of water, ceases with the fourteenth person.

## CCCCXXXVII.

VRĪHASPATI:—On failure of them, uterine brothers, or brother's sons, paternal and maternal kinsmen, pupils, or learned priests, are entitled to the wealth of the deceased:

2. If a man die leaving no issue, nor wife, nor brother, nor father, nor mother, let all kinsmen, related by the funeral cake

cake *in equal degree*, divide his inheritance in due proportions.

3. BUT half the collected wealth should be first set apart for the benefit of the deceased, and carefully appropriated to his monthly, six-monthly, or yearly obsequies.
4. WHERE many claim the inheritance of a childless man either paternal or maternal, or more distant kinsmen, he, who is the nearest of them, shall take the estate.

LET half the estate be set apart to defray the obsequies of the deceased. Such is the sense.

AMONG these, the eighth ancestor, and his son, grandson, great grandson, daughter's son and the rest, as far as the fourteenth in descent counted from the eighth ancestor, successively claim the inheritance: the same must be understood in respect of the ninth ancestor and the rest; for nearness of kin and superiour benefits are entitled to respect in every case. Men connected by equal oblations of water are allied by family; and on failure of such kinsmen *as partake of the remains of funeral cakes*, those, who are connected by equal oblations of water, are heirs, as suggested by the term "kinsmen allied by family;" for it is so remarked by JI'MU'TAVA'HANA. Such is the succession of kinsmen.

X. ON failure of them, the spiritual preceptor is heir; if he be dead, the pupil; by the text of MENU (CCCCXXXIV).

JI'MU'TAVA'HANA.

IN default of an order of *succession* suggested by the sense or terms of the text, the order suggested by the *literal* reading is respected: such is his notion. The word kinsman or connexion, as employed by YA'JNYAWALCYA (CCCXCVIII), must include the spiritual preceptor: there is consequently no deficiency in the text of YA'JNYAWALCYA. But others contend, since the spiritual preceptor stands in the place of a father, and the

pupil in that of a son, therefore the spiritual preceptor inherits only on failure of the pupil. That is futile; for a similar reading occurs in the texts of BAUDHA'YANA and others, and YA'JNYAWALKYA declares, that a fellow student in theology takes the succession on failure of the pupil (CCCXCVIII).

#### CCCCXXXVIII.

BAUDHA'YANA:—ON failure of kinsmen connected by the funeral cake, kinsmen allied by family shall inherit; in default of them, the spiritual preceptor, the pupil, or the priest hired to perform sacrifices, shall take the inheritance; and lastly, on failure of them, the king.

THE term spiritual preceptor (*āchārya*) signifies him who invests the pupil with the sign of his class, as expressed in the text.

#### CCCCXXXIX.

HE, who girds the pupil with the sacrificial cord, and instructs him in the *Vēda*, is called an *āchārya*.

SRI' CRĪSHNA TERCA'LANCA'RA concurs in this exposition. A fellow student in theology is he, who studies the *Vēda* under the same preceptor. In default of him, descendants from the same ancient sage claim the succession; on failure of them, men sprung from the same branch of a venerable stock, by the text of GO'TAMA (CCCCXL). So JI'MU'TAVA'HANA.

#### CCCCXL.

GO'TAMA:—LET those kinsmen take the inheritance, who give the funeral cake, *who offer the remnant, and water only*, who are descended from the same holy sage, or lastly who spring from the same company of *Rishis*.

BUT some hold, that the spiritual teacher and the rest could only inherit on failure of descendants from the same branch of a venerable stock or company

party of *Rishis* in conformity with the order of *succession* stated in the text of GÓTAMA, and there is no difficulty in comprehending kinsmen descended from the same holy sage or from the same company of *Rishis*, in the texts of YAJÑYAWALKYA, VRIHASPATI and BAUDHA'YANA, under the terms "distant kinsmen," and, "allied by family" as the phrase, "kinsman allied by family," which is used by MEVU (CCCCXXXIV), is acknowledged by JIMUTAVAHANA to include the *śamanódakas* or kinsmen connected by equal oblations of water, so may the term be similarly extended in the present instance also, agreeably to the coincidence of the text of GÓTAMA. That opinion is questionable.

OTHERS contend, that the stipendiary priest is heir immediately after the pupil, in preference to such distant kinsmen, by the text of BAUDHA'YANA (CCCCXXXVIII), and he ought to have the first title, because he was more immediately connected *with the deceased*, than the fellow student in theology.

BUT MISRA says, the succession may be thus briefly stated, the son is *first heir*, on failure of him the son's son, in his default, the great grandson by males, if no such issue be left, the virtuous wife, on failure of her, the daughter, after her, the mother, if she be dead, the father; for want of him, the brother, in default of him, his son, on failure of the nephew, the *śapinda* nearest of kin to the deceased, after him, the more distant *śapindas* in order; if there be none such, the nearest *śaculya*, or kinsman allied by family, next, the more distant *śaculyas* in order, if there be none, the daughter's son, in default of him the mother's family and the rest, on failure of all *other* heirs, the king, excepting the property of a *Bráhmāna* but, in the case of wealth left by a priest, another honest *Bráhmāna* is alone entitled to take the inheritance.

ON failure of persons descended from the same primitive stock, a kinsman *in general* is heir, and by that term is meant a relation of the deceased himself, of his father, or of his mother.

## CCCCXLI.

THE sons of his own father's sister, and those of his own maternal uncle, must be considered as his own kinsmen.

IN like manner there are kinsmen of the father and of the mother, such as their father's sister's sons, mother's sister's children, and maternal uncle's issue; these take the succession in order, as MISRA also observes. Consequently these are comprehended in his recapitulation, by the terms, "on failure of him, the mother's family and the rest."

HERE authors deduce from the form of succession delivered by JI'MU'TA-VA'HANA, that, on failure of kinsmen allied by the funeral cake or by family name, the son of the father's maternal uncle, or of the father's sister, or of the mother's maternal uncle, or of the mother's sister, are likewise heirs. That is not accurate; for, since these are inferior to the father's maternal grandfather, and mother's maternal grandfather and others, it is improper, without the authority of express law, to affirm the title of the father's maternal uncle's son and the rest; and the word (*bandhu*), being taken in its accepted sense, obviously signifies the kinsmen of the proprietor himself; and their title is in effect thereby established: this we hold reasonable.

ON failure of heirs including kinsmen sprung from the same branch of a venerable stock; the succession devolves on *Bráhmaṇas*, by the text of MENU.

## CCCCXLII.

MENU:—ON failure of all those, the legal heirs are such *Bráhmaṇas*, as have read the three *Védas*, as are pure in body and mind, as have subdued their passions; and they must consequently offer the cake: thus the rites of obsequies cannot fail.

"HAVE read the three *Védas*;" have studied all the *Védas*.

"Thus the rites of obsequies cannot fail;" that is, rites, which would be lost by the estate being enjoyed without performing obsequies for the deceased,

*ceased*, being completed in consequence of the transfer of *that* duty to another by the descent of the property to a *Brabmana*, do not fail.

JĪMU'TAVĀHANA.

THUS the rites, namely the obsequies of the deceased proprietor, cannot fail.

CULLUCABHATTA.

OTHERS explain the text, on failure of heirs including kinsmen sprung from the same branch of a venerable stock, since the wealth of the deceased goes to *Brāhmanas*, the king, pursuing proper conduct, does not violate justice.

SINCE it must *at all events* be said "on failure of these," therefore *the word* all, *as here* used by MENU, must be intended to intimate the right of *all* heirs before mentioned, including men sprung from the same branch of a venerable stock or company of *Rishis* and the rest. Such is the opinion of CULLUCABHATTA.

THE want of heirs descended from the same holy sage, or from the same company of *Rishis*, and the failure of *Brāhmanas*, must be understood *to be the nonexistence of any such person* in the same town, else the escheat to the king could never take place

JĪMU'TAVĀHANA.

THE falling of *estates* to the sovereign is mentioned in a contiguous sentence. MENU declares, that, on failure of virtuous *Brāhmanas* residing in the same town, the inheritance of a *Cshatriya* and the rest shall escheat to the king



classes;" other than the sacerdotal tribe; namely the military class and the rest. But the wealth of a *Bráhmāna* must never be taken by the king: consequently, on failure of honest *Bráhmanas*, he must give the property of a priest to *Bráhmanas* in general. Such is the notion of CULLU'CA-BHATTA. The wealth of other classes, in default of heirs including kinsmen sprung from the same branch of a venerable stock, the king should give to honest *Bráhmanas*; on failure of them, he may take it himself as an escheat. Such is the opinion of JÍMU'TAVA'HANA.

BUT MISRA and the rest hold, that the first text of MĒNU (CCCCXLII) relates to *the property of Bráhmanas*, but the wealth of *Cshatriyas* and the rest shall be taken by the king alone. Such being the rule of decision, why may he not likewise take the estate of a priest? To obviate this doubt, the legislator first ordains, that the property of a *Bráhmāna* shall not be seized by the sovereign. Accordingly BAUDHA'YANA declares the taking of holy property reprehensible in a king.

## CCCCXLIV.

BAUDHA'YANA:—HOLY property unduly appropriated, kills a son and a son's son; for it destroys like the most exalted poison: therefore the king shall on no account take the property of a *Bráhmāna*.

"DESTROYS a son and a son's son;" kills them also. The property of a *Bráhmāna* is indeed the most deadly poison to the sacrilegious spoiler.

The *Retnácara*.

MUST it not be affirmed, that this text shows it highly reprehensible to take wealth from a *Bráhmāna* by force, fraud, or the like *but not so to take it without violence as an escheat*? No; for the text of DE'VALA is explicit.

## CCCCXLV.

DE'VALA:—IN every case the king may take the wealth of a subject dying without an heir, except the estate of a priest; for the property of a *Bráhmāna*, dying without an heir, must be given to learned priests. "HEIR;"

"HEIR," taker of inheritance : the term is regularly derived in a derivative sense.

## CCCCXLVI.

VRĪHASPATI:—THE king takes as an *escheat* the wealth of those *Cshatriyas*, *Vaiśyas* and *Sūdras*, who leave no son, nor wife, nor brother; for he is lord of all.

IN this text, by declaring that he may take the wealth of *Cshatriyas* and the rest, it is intimated, that the property of a *Brāhmaṇa* shall not be taken.

## CCCCXLVII.

SANC'HA and LIC'HITA:—THE property of a learned priest descends to *Brāhmaṇas*, not to the king; wealth consecrated to the gods, or allotted to priests, must not be seized by the sovereign, nor a deposit open or sealed, nor wealth regularly inherited, nor the property of infants or women: thus the *Vēda* expresses,

"THE inherited property of a woman must not be seized by the king, nor *acquired* effects of an infant, nor the wealth of a woman received in the six modes of acquisition, nor the patrimony of infants."

THE term, which occurs in this text (*parishad*), signifies a *Brāhmaṇa*.

The *Vivāda Retnācara* and *Vivāda Chintāmeni*

"DEPOSITS" and the rest are terms employed indefinitely : hence the property consecrated to the gods, or allotted to priests, must on no account be taken by the king, unless as a fine or the like. A sealed deposit is a distinct sort of bailment, deposited under seal. "Wealth regularly inherited" alludes to patrimony; it is property, which has descended to the possessor from another. So the *Madana Pāryāta* and *Retnācara*.

THE seizure of a *Brāhmaṇa's* property being forbidden in these texts,

on whom shall the estate of a *Bráhmāna* devolve? This question arising, and the words of DE'VALA (CCCCXLV) bearing the same import, the text of MENU (CCCCXLII) must relate to the sacerdotal class only. Consequently, on failure of heirs including kinsmen sprung from the same branch of a venerable stock or company of *Rishis*, the estate of a *Bráhmāna* descends to learned priests, and the property of any other person escheats to the king; the wealth of the military and other classes does not go to learned priests. Such is the result. Accordingly the text of NA'REDA also exhibits the right of the king to the escheat, on failure of daughters and the rest, not in default of heirs including priests.

## CCCCXLVIII.

NA'REDA:—ON failure of daughters *the heirs* are, kinsmen allied by family, more distant kindred, and men who claim the same origin *with the deceased*; on failure of all *these*, the property escheats to the king,

2. Excepting the wealth of a *Bráhmāna*;\* but a king, attentive to his duty, shall allot a maintenance to the wives of the deceased: this is declared to be the rule of inheritance.

KINSMEN allied by family are sons of paternal uncles and the rest. Men, who claim the same origin, are persons belonging to the same tribe. But all this supposes the widow to be deficient in good qualities.

The *Retnácara*.

By "persons belonging to the same tribe," it is not meant, that any *Cshatriya* is heir of a *Cshatriya*, and any *Vaisya* of a *Vaisya*; for that would be an unprecedented construction: but it must be understood, from the coincidence of the text of GO'TAMA (CCCCXL), that 'similar origin' intends similarity of descent from a holy sage or from a company of *Rishis*. MISRA and the rest thus expound the law.

\* This supposes the widow to be deficient in good qualities; that is, the

the wife left by a *Cshatriya* or other man of inferior class; but in the case of a *Bráhma*n's widow deficient in good qualities, the meaning is, let the king, levying it on the heirs, give her a maintenance. *VISHNU* also propounds the right of the king to the escheat, on failure of descendants from the same company of *Rishis* with the deceased; for his expression "on failure of a fellow student" (CCCCXVII) must be taken in a comprehensive sense, from the coincidence of other texts.

It should not be argued, because the ordinances of *MENU* prevail over all other codes, therefore must the texts of other sages be reconciled with that, which is propounded in his institutes: and, for the sake of coincidence with his precept (CCCCXLII), the right of the king, mentioned in other texts, takes effect only on failure of honest *Bráhma*nas. There is no difficulty in explaining the text of *MENU* (CCCCXLII) in this sense. *VRĪHASPATI* pronounces that to be of no authority, which contradicts the sense of his ordinances; and it is consistent with just reasoning to infer, that, as that exposition of a law, which is most conformable with reason, prevails, when two interpretations of it are found in competition, so the exposition of a law of *MENU*, which coincides with the text of another ancient sage, shall prevail, when two interpretations of it are proposed. Consequently the term "all" in the second text of *MENU* (CCCCXLIII), and the word "heir" employed by *CULLU'CABHATTA* in expounding that term, 'on failure of the heirs abovementioned,' signify all heirs including persons sprung from the same company of *Rishis*, but not including *Bráhma*nas unallied to the deceased. Authors thus expound the law. Of these two opinions one only should be followed.

If other *Bráhma*nas refuse to take the inheritance, or if there be no *Bráhma*nas, it must in this case be thrown into the water, in like manner as has been ordained by *NA'VEDA* (Book I, v. CCXXXI).

THE effects of an infant, and those belonging to a woman, must not be retained by the king, even though they have fallen into his possession (CCCCXLVII): *SANC'HA* and *LIC'HITA* themselves cite the authority of a precept; "thus it is expressed," that is, the *Véda* declares: this must be sup-

plied. "The property of a woman;" effects belonging to her; the inheritance of her husband, *which has devolved on her*, and so forth. "The effects of an infant," property any how acquired by a minor, having been given to him by any person whomsoever. Some lawyers say, the last part of the text explains the property of a woman and effects of an infant; and this relates to the king's own wife, sister and the rest; but of other women, even the inheritance or the like must not be taken by him: this will subsequently become manifest. "The six modes of acquisition;" received before the nuptial fire and so forth.

## CCCCXLIX.

MENU:—The king should guard the property, which descends to an infant by inheritance, until he return from the house of his preceptor, or until he have past his minority.

WEALTH, which descends to an infant by inheritance, and becomes the property of the minor, let the king guard; that is, let him protect it from the other heirs.

The *Retnācara*.

CONSEQUENTLY the meaning is, let him act in such a manner, that other heirs may not take the whole, defrauding the infant who is incapable from nonage of conducting his own affairs; or the sense may be, let him commit the share of the minor in trust to any one coheir or other guardian. "Until he return from the house of his preceptor;" this alludes to the three *first* classes, for persons of those tribes are not qualified to conduct their own affairs before they return home. "Or until he have past his minority;" this alludes to the servile class: a young man has past minority, when his age is not less than sixteen years (*that is, when he has completed his fifteenth year*).

## CCCCCL.

VISHNU:—The king should guard the property of an infant, and the effects of the husband and wife *in the absence of the husband*.

—CCCCCLI.

## CCCCLI.

SANC'HA and LIC'HITA:—LET the king protect the effects of infants who are incapable from nonage of conducting their own affairs, and the goods belonging to widows of learned priests and of valiant soldiers; but effects, of which there are no owners, escheat to the king.

THE king must guard the property which devolves on the wives of learned priests and of valiant soldiers, by the absence or departure of the priest and the soldier. Such is the exposition delivered by CHANDE'SWARA.

## CCCCLII.

BAUDHA'YANA, treating of the succession of sons:—THEIR shares, if they be incapable from nonage of conducting their own affairs, let the king keep carefully guarded, together with the accumulation on those shares, until the minors arrive at *years of discretion*.

“ WITH the accumulation;” with the increase. “ Carefully guarded;” well protected. “ Until;” in the sense of restriction: before they attain their seventeenth year.

*The Retnâcara.*

CONSEQUENTLY, if the proprietor be dead, and his sons choose to make a partition of his estate, the king, being informed by the minor, or by another kinsman, or by his own officer, must himself, or through some person appointed by him, keep the share of the minor until he attain the age of sixteen years: in some instances it should be laid out for increase. In like manner, the expenses and other matters should be superintended by the king himself, or by a person appointed by him. These and other points may be argued from the reason of the law. Again; if the minor have no brother, the whole estate should be nevertheless guarded in a similar manner; for the reason of the law is the same. Thus the property of a woman, and the goods of a minor, falling into the king's power, should not be taken by him as owner: this has been already noticed. But it should be here remarked, that the property of a  
minor

minor should be intrusted to heirs and the rest *appointed* with his concurrence; or, if the infant be absolutely incapable of discretion, with the consent of a near and unimpeachable friend, such as his mother and the rest. CA'TYA'YANA declares, that kinsmen must guard the property of an infant.

### CCCCLIH.

CA'TYA'YANA:—LET all the coheirs guard the share, which belongs to an absent parcener;

2. But, if a man die leaving an infant son, his wealth must be preserved entire by his kinsmen; and they may divide it in due proportions, after the minor has past adolescence.

If one, who has an infant son, die, his property must be preserved by the kinsmen or brethren of the minor; it must not be immediately distributed: but they may divide the estate after he has past adolescence. Such is the meaning of the phrase. Consequently the share of a minor must be preserved, during his adolescence, by kinsmen, like the allotment for an absent parcener; for the reason of the law is the same: but before his adolescence partition is not proper. In like manner, the king, or the kinsmen appointed by him, should guard the minor's property received from his brothers as his share of the inheritance. Here kinsmen signify relations in the male line, or, on failure of them, a sister's or daughter's son or other near kinsman of the father. In practice a mother is guardian of a minor, and of his property; and that is proper, if she be capable of *protecting the ward*: but being a woman, she is under the control of her husband's mother and the rest; still the effects of the widow and of the grandson must be guarded; and since the mother in law is a woman, she requires the aid of another kinsman: and he should be selected with the concurrence of the paternal grandmother, and be approved by the king; for the paternal grandmother best knows who, among the kinsmen, is skilled in the conduct of affairs, and the king is an universal superintendent: and if the widow be old and capable of governing her own conduct, there is no harm in permitting the estate to be guarded by a kinsman selected by her; for it is only directed, that a widow and the rest shall guard the property by any *possible* means. A contest arising between the mother in law

law and the widow, if the king, residing at a great distance, cannot accurately distinguish their good and bad characters, then indeed any person may be appointed by the king's own selection. This method, established by lawyers on their own judgment, is consistent with the reason of the law.

#### CCCCLIV.

VRĪHASPATI:—A BROTHER, a brother's son, a *śapinda*, or a pupil, performing rites with a funeral cake *for the deceased*, shall thence obtain increase *of prosperity*.

CONSEQUENTLY he, who takes the estate of the deceased, shall perform his obsequies; but, if one be heir to the estate, and another be qualified to perform the obsequies, he must give a sufficient sum and cause the rites to be celebrated by him, who is qualified to perform them.

#### CCCCLV.

SMṚITI:—He, who takes the estate, shall perform the obsequies.

THE word *śrādd'ha*, here signifies the obsequies performed exclusively for a person recently deceased. The *Pracāsa* and *Retnācara*.

BUT others contend, on the text of VRĪHASPATI above cited (CCCCXXXVII 3), that he, who takes the estate of the deceased, must also perform the annual *śrādd'ha*: and such is the practice with some persons. That is wrong; for there is no difficulty in considering the word "annual" as relating to the first anniversary obsequies. Another text does relate to that subject; "He, who takes the estate, and fails in performing the *last* duties for the deceased, is *criminal* &c."

How can the spiritual preceptor, who takes the estate of a *Cśātriya*, perform his funeral rites; since that is forbidden?

#### CCCCLVI.

THE priest, who performs funeral rites for persons of an inferior



riour tribe, is degraded to that class in the present world and in the next.

No , for this text relates to brothers unequal in class; and the difficulty is obviated by saying, the spiritual preceptor may accomplish the funeral rites by the intervention of a qualified person equal in class with the deceased.

#### CCCCLVII.

VISHNU:—HE, who is heir to the estate, is the giver of funeral cakes.

## SECTION II.

## ON THE INHERITANCE OF ANCHORITES AND DEVOTEES.

THE subject of succession to the property of a householder being concluded, YAJNYAWALKYA propounds succession to property, which belonged to a man who had entered into an order of devotion

## CCCCLVIII

YAJNYAWALKYA:—THE heirs of a hermit, of an anchorite,\* and of a student in theology, are, in *inverse* order, the spiritual teacher, the virtuous pupil, and the brother by religious duties being pupil of the same preceptor.

“ BEING pupil of the same preceptor,” having the same spiritual teacher. He is brother by religious duties and pupil of the same spiritual father. the apposition is in the form called *carmadhāraya*. “ In order,” that is, in the inverse order. hence the spiritual preceptor shall take the property of the perpetual student in theology, the virtuous pupil, versed in the study of revelation concerning the supreme soul, and in preserving that sacred science, *shall take* the estate of an anchorite; and the brother by religious duties, being pupil of the same spiritual father, takes the wealth of a hermit. “ The brother by religious duties” is one familiarly known as brother of the deceased, the subsequent term (*écaturbhi*) may signify belonging to the same order of devotion.

If it be alleged, that this contradicts the text of VASISHT’HA (CCCXXXVIII), it may be nevertheless reconciled by supposing effects any how possessed.

CHANDÉSWARA.

\* I follow Sir William Jones in applying the name of hermit to the *Vanaprastha*, and anchorite to the *Yati* or *Sannyāsi*. See translation of *Mēnu*, Chap. 6

VACHESPATI MISRA concurs in the same exposition. Another author has stated much, which was obvious, concerning the supposition of effects any how possessed; for example, the hoard of a hermit for the performance of annual rites, and the trusts of an anchorite or the like.

BUT JĪMU'TAVA'HANA considers the last term of the text (*ēcaṣṭrī'bf*) as distinct from the rest. Consequently, the spiritual brother shall take the property of a hermit; the virtuous pupil, the effects of an anchorite; and the spiritual preceptor, the wealth of a student in theology: on failure of them, one, who belongs to the same order, is heir. The perpetual student in theology is he, who, having abandoned his father and the rest, resides for life in the family of his preceptor, remaining strictly obedient to him. But the property of a temporary student in theology shall be taken by his own father and the rest. Such a student in theology, according to the learned, is he, who remains near his father and the rest of his kindred.

#### CCCCLIX.

VISHNU:—THE spiritual preceptor shall take the property of a deceased hermit.

IT should not be argued from the coincidence of this rule of VISHNU, that the direct order is meant in the preceding text; and that the inverse order need not be supposed. Were it so, the consequence would be incongruous, since the spiritual brother would be heir of perpetual students in theology, although their spiritual father were living. Nor should it be argued, that here, as in the case of succession to the estate of him who leaves no son, the order may be such, that the person last mentioned is heir on failure of the preceding. The anchorite can have no spiritual father. It must be therefore understood, that the spiritual father is first heir to the wealth of a hermit; on failure of him, the spiritual brother; as in the succession to the estate of a worldly man, who leaves no male issue. According to JĪMU'TA-VA'HANA, the insertion of both terms, spiritual brother, and pupil of the same tutor, or devotee of the same class, is useless; for both senses are conveyed by the single term spiritual brother.

AGAIN ; terms are correlative in order then only, when they correspond in number, as in the example, " The charms of the lyre, of the wreath of jasmine, of the blue lily, are surpassed by her delightful voice, her smiles, and her enchanting glance : " but here the number is unequal. This objection is answered *by saying*, that, although correlative order be only acknowledged in the instance of terms equal in number, the sense shows, that the last, not a preceding term, must be rejected as not included in the correlative order. The sense, exhibited by construction, is subordinate to the implied purport : as in the example, " CHAITRA is armed with a sword and wears earrings, and MAITRA does so likewise ; " the wearing of earrings is alone suggested by the term " so," because the implied purport points thereto: and thus in other instances..

As for the remark, that, as the word pupil, in the instance of the anchorite, signifies him, who duly learnt the forms enjoined to that order, so the term spiritual preceptor may signify him, who taught those forms ; and the spiritual father is therefore first heir of hermits and the rest ; after him, the pupil ; after him again, the spiritual brother ; and lastly, one belonging to the same order : and such may be the successive right of inheritance. That argument is erroneous ; for it is inconsistent with approved usage.

## SECTION III.

## ON A SECOND PARTITION AFTER REUNION OF PARCENERS.

IN the ring of succession to the property of him who has no son, it has been said, "a reunited parcener is heir of a reunited one," now, if two coheirs who have renewed coparcenary, make a second partition, how is it regulated? On this point MENU and VISHNU propound a text above cited; "if brethren, once divided and living again together as parceners, make a second partition, the shares must in that case be equal, and the first born shall have no right of deduction" (CCCCVI 1).

HERE "equal shares" suppose the reunion of brothers belonging to the same tribe but, if a *Brahmana* and a *Cshatriya* become reunited, their allotments must be understood to follow the proportions before mentioned, for this text is merely intended to deny the right of deduction which had been ordained in favour of the first born

JĪMU'TAVA'HANA.

FROM the concurrent import of the text of VRĪHASPATI (CCCCVII 1), does it not appear, that a second deduction in right of seniority is denied when a second partition is made,\* not the original right to a larger portion, which had already gained validity? No, for, whether they be father and son, brothers, uncle and nephew, or the like, they possibly may be undivided in respect of wealth acquired by the father, paternal grandfather, or the like accordingly, the first born cannot have separate property in the identical portion formerly received on account of seniority, because a common right to all effects is vested in both reunited parceners by the avoidance of the several rights proclaimed by a former distribution, since JĪMU TAVA'HANA expresses, 'parceners, having made a partition, and afterwards living together in the same house as joint housekeepers, after thus annulling parti-

\* See the various reading of this text in a following page. T.

tion, "what is thy property is mine, what is my property is thine," are said to be reunited' It should not be argued, that the term "annulling partition" only signifies obviating the mediate consequence of the characteristics of partition, not cancelling any several vested rights Were it so, since it is not a maxim, that lots will fall on the same chattels *as before*, and since the lots cast may ascertain a right to other goods, while the original right to the former effects is retained, both reunited parceners might have property in almost every chattel after the second partition

NOR should it be objected, were it so, how could the shares, formerly ordained for a *Bráhnana* and a *Cshatriya*, remain in a *second distribution*? Since the text concerning partition among brothers of various classes may be applicable to the second, as well as to the first distribution, and since it is not contradicted by any other text, it should be so established Thus the meaning of the phrase, "their allotments follow the proportions before ordained," is, that the division shall be made in that proportion, and mode, which were observed in the first instance, for this is no less a partition *than the former distribution was*.

BUT MISRA thus explains the terms of the text (CCCCVII 1), although seniority exist, entitling the first born to a greater portion, still that greater allotment shall not be given the same legislator propounds an exception in respect of wealth acquired by learning The commentator's meaning is this, a larger portion, again received in right of seniority by birth or the like, under the text of VRĪHASPATI (XLV), because this is also a partition of property, is forbidden in this second distribution. since the claim of the first born to the larger portion, formerly received by him, had been already obviated,\* the result is the same, the only difference consists in the *commentator's* display of learning As for the remark, that the same legislator propounds an exception in respect of wealth acquired by learning, that is not restricted to science, for the exception, which shall now be mentioned in respect of a double share, must be considered as rela-

\* Great obscurity pervades the whole argument The eldest has no right to a second deduction nor does he retain, during renewed coparcenary, his separate property in the identical effects which composed his former allotment in right of seniority but he receives on a second partition the equivalent of his original due T.

ing to acquisition in general The legislator declares that the acquirer shall have a double share in the present instance, as in the original partition

# CCCCCLX .

VF ĪHASPATI —BUT, if one of the reunited brethren acquire wealth by learning or valour, or the like, two shares of it must be given to him *on a second partition*, and the rest shall have each one share.

By learning, or valour, or any other means of acquiring several property

The *Retnācara*

CONSEQUENTLY the law, promulged by VYĀ'SA for the first partition (CA), is extended to the second the acquirer therefore has a double share, according to the *Retnacara* and the rest, if the wealth were acquired by the simple exertion of learning or the like with supplies from the common estate and so forth, but, if it be the acquisition of science technically so denominated by CA TYĀ'SĀNA, the common estate not being used and so forth, the wealth thus acquired is the several property of the acquirer, and if supplies were received from the common estate and so forth, he, who is equal or superiour in learning, has one share, and he, who is inferiour in knowledge, is excluded from participation if the wealth be acquired by agriculture or the like, without supplies *from the common estate*, it becomes the several property of the acquirer, with supplies, it is shared by all the parceners this, which has been already explained, must be also understood in the present case.

BUT, according to JIMUTĀVA'HĀNA and others the acquirer shall have a double allotment, and the rest shall have each one share of wealth any how gained with supplies from the joint stock and so forth, if the learning were acquired after a maintenance provided out of the common stock, all the parceners shall have the shares ordained for them, although the joint property were not employed during the acquisition of the wealth but, even though the common funds of support be not used during the acquisition of science, nor during that of wealth, they, who are equal or superiour

our in learning, participate : if the money be earned without use of joint property, through agriculture or the like, by *the labour of* a body nourished on the joint funds of support, it *nevertheless* becomes the several property of the acquirer, as before explained.

According to all opinions, the distribution is regulated by the use made of joint property. What is received from a friend, or on account of marriage, or the like, is held as several property : the implied sense of the text of VRĪHASPATI must be considered as extending thus far, according to the circumstances of each case.

When partition is again made after the period of reunion, what share belongs to him, who, being skilled in the means of acquisition, had gained much wealth previously to the former distribution, and who was therefore entitled to two shares at the time of dividing it ; and what proportion belongs to him, who gained much wealth after the original partition ? If it be said, an equal share with the rest ; that is inconsistent with common sense : equality of allotment, consisting *only* in the prohibition of a greater portion for the first born, must be therefore established in the text above cited (CCCCVI 1). In like manner an unequal distribution, after the reunion of brothers of various classes, is legal. A second allotment of a greater share to the first born is forbidden by the text above cited (CCCCVII 1) ; the former right to a greater portion is not thereby denied, since it had already gained validity. Even on the reading approved by CHANDÉSWARA (*punar vibhāga carant tēśhām jyaisht'byan na vidyaté*, if brothers again make a division of their joint-property, the first born has no right to a larger portion ; instead of *tēśhām vibhāga carant punar jyaisht'byan na vidyaté*, if they, *who, after separation, have become reunited through mutual affection*, make a partition, seniority does not again prevail ;) the right of the first born to a larger portion is only denied when a second partition is made.

It should not be argued, that the term "seniority" may here bear a general sense, because there is no authority for restricting its meaning in the present instance ; and that the term "again" must signify "but also." The larger portion, already received in right of seniority, cannot now be



forbidden; and it is inconsistent with common sense, that he, who contributed a greater sum to the joint stock, when he became reunited, should receive back a less sum, when a division is made; and further, the case is similar to that of the acquirer of wealth as abovementioned. Nor should it be argued, that a common right to the whole property being vested in both reunited parceners, there is no authority for any subsequent unequal distribution. As wealth, gained by partners in trade and adventure trafficking with unequal stock, is distributed in proportion to their respective capitals, even though all are equally owners of the wealth thus acquired; so, in this case likewise, nothing prevents a similar induction. Accordingly MISRA denies the right of the first born to a larger portion on a second partition of joint property, by remarking ‘ although seniority exist entitling the first born to a greater portion, still that greater allotment shall not be given. ’

OTHERS say, the larger portion already obtained in right of seniority is not retracted; for the text is intended merely to prohibit the deduction before ordained for the first born; and the remark of JI'MU'TAVA'HANA is intended merely to forbid that allotment in right of seniority, which had been before ordained, that is, enjoined or declared by legislators for the original partition.

VRĪHASPATI defines a reunited parcener (CCCCXXX). According to JI'MU'TAVA'HANA and the rest, reunion can legally take place among them only, who are mentioned in the text, namely father and son and the rest. According to CHANDE'SWARA and others, reunion may legally take place among all those, including the great grandson, among whom partition can be made. Some hold, that disunited sons and the rest have no claim of succession, if there be reunited sons or the like. In no case is the reunion of female heirs admitted.

• If a man, having made a partition with his sons, and again residing with any one of them as a reunited parcener, die after begetting another son, this last born child shall be sole heir of his estate, by the text of MENU (CI).  
 “ He shall make a partition with the brethren who are reunited; ” that is, the

the reunited brethren shall receive their respective shares, and the son, born after partition, shall take his father's allotment.\* It should not be argued, as the meaning of the term "share," that the son born after partition shall divide *his father's allotment* with his reunited brothers. That would contradict the precept, "A son, born after a division, shall alone inherit the patrimony". Nor should it be objected, that this contradicts the precept "a reunited parcener is heir of a reunited one." That relates to the competition of equal claimants. Nor should it be objected, that partition is proper, because the claim of a reunited parcener in right of renewed coparcenary, and that of a son born after partition in right of posterior birth, are both distinct claims. It is shown by a text formerly cited (C), that sons, born before the distribution have no claim on the wealth retained by the father after partition, if a son born after it exist, and it is improper to restrict that text, unless common sense or express law oppose *its comprehensive import*, for reunited parceners have been enriched by their own shares, but the son born after partition has no means of subsistence besides his father's share.

If he, who is reunited with another brother, possess any undivided property, on whom does the right thereto subsequently devolve? It goes to the reunited parceners only, for a text above cited (CCCCXXVI) shows, that brethren who have renewed coparcenary, exclusively inherit the wealth of a reunited brother, and this undivided property belonged to a reunited parcener.

THE text of NA'EDA (CCCCXXXIII) is thus read by MISRA, "The vested share of reunited brothers is declared to belong exclusively to them; otherwise it shall go to their *mutual* heirs, or to others, if they leave no issue"† If there be no heir, whose claim is preferable to that of reunited parceners, the succession devolves on them, although there be a disunited claimant as near of kin, otherwise, that is, on failure of reunited parceners, the heritage goes to their *mutual* heirs, namely, to the sons or other descendants of a reunited parcener. Of two coheirs, who have renewed coparcenary, if one die childless, after the demise of the other who did leave male issue, the sons of the reunited parcener inherit the estate such is

\* According to this gloss, the text should be otherwise translated T.

† The difference of the reading is, *ato nyat hanā bhojā tu*, instead of *ato nyatananā bhojā*

the meaning. If they leave no issue, that is, no son or other male descendant, it goes to others, namely to the widow and the rest. Consequently, in such a case, the legal heirs of a reunited parcener shall alone take his inheritance; no others *shall take it*, neither disunited parceners nor their legal heirs. Some lawyers so expound the text.

THE vested share of reunited parceners belongs exclusively to them; it appertains exclusively to reunited parceners: mentioned as grounds for showing, that, on failure of them, the succession devolves on others. Or it conveys a precept on the doubt whether all sons may claim partition, because the estate of the deceased was in effect wealth acquired by their father or by his ancestors; and because they are equally *his sons, and therefore heirs* by the texts of DEVALA and the rest (V). Otherwise, that is, on failure of reunited parceners, *the succession devolves on their heirs, that is, on their sons and the rest*. If reunited parceners die leaving no male issue, it goes to others, that is to disunited coheirs. Such is the exposition approved by MISRA. It may also go to any others whomsoever, according to the circumstances of each case, conformably with the rules of decision abovementioned.

MISRA here observes, it is not the meaning of the first hemistich, that the same share, which belonged to each at the time when reunion took place, shall be recognized and preserved from him when partition is again made: for, in a community of goods by reunion with half the former wealth, the phrase would bear a spiritual sense, if such were the strict rule.

IN the *Pārijāta*, the text is read, sharers of the wealth of others than these (*atōnya dhanārāśa bhōjab*). But that is rejected, as differing from many copies.

The *Retnācara*.

As for what is said, in the text of CA'TYA'YANA (CCCCXXVII), on the subject of one taking the heritage on failure of the other, the legislator limits the precept, by saying, "if they have no progeny;" the meaning is, because they reciprocally share their estates, if they have no offspring.

MISRA.

" LEAVING

“ LEAVING no issue ” is an expression merely illustrative, comprehending one, who leaves no wife or the like. Hence a reunited brother, or other coheir, has no right of inheritance, if he, who has no son, leave a widow: and thus the doubt is removed, whether all sons shall equally share the estate, on the death of their father, who had made a partition with his children, and who was reunited with one of them, because the leaving no issue is stated as a ground of a distinction relative to reunion; for, taking the term in a comprehensive sense, it must necessarily extend to brothers and the rest; else a reunited uncle would inherit the wealth of his reunited nephew, although a brother exist. Therefore, on failure of preferable claimants, those, among equal claimants, who were reunited with the deceased, inherit the wealth of a reunited parent. Here again, in respect of brothers and the rest, a distinction subsists, founded on texts of law, and relative to the whole and half blood: thus also it is necessary to take the word “ issue ” in MISRA’s definition, as signifying preferable claimant; for it is said, a disunited son has no claim, if there be a reunited one. As for the argument, that, the word “ seed ” in the text above cited (CCCCXXVII) obviously presenting the sense of offspring, it is consistent with just reasoning to consider the distinction relative to reunion, as implying the failure of offspring, there appears this objection to the argument; since it is a maxim, that, on failure of preferable claimants, those, among equal claimants, who were reunited with the deceased, have a title to inherit, the independent condition “ excepting sons and the rest,” is troublesome and groundless; for the term “ leaving no issue ” may bear the sense abovementioned.

ther, a brother, or a father, are considered as the six fold *separate* property of a *married* woman.

WHAT was bestowed by any person whomsoever, before the nuptial fire, at the time of the marriage: " what was given on the bridal procession ;" that is, a present following a bride when she is led to the house of her husband : and what was given in token of love ; that is, bestowed by her father in law, or other person, whose affection is engaged by her good temper, probity, skill, and other good qualities. " Six fold" is mentioned to except a less, not a greater number ; for a present given to a superseded wife, which is another sort of separate property held by a woman, is also mentioned by YA'JNYAWALCYA. .

The *Retnâcara*.

“WHATEVER is given;” here the person who makes *the gift* is not her father or other relation; for, were such the meaning, it would simply intend “what was received from a mother, a brother or a father.” Therefore it means only what is given by any person whomsoever whether he be or be not allied by blood. Accordingly it is said by the author of the *Retnâcara*, ‘given by any person whomsoever at the time of her marriage.’ What friends also give, at the time of a girl’s nuptials, in token of respect to the damsel, is her *separate* property. As the practice subsists in this country for the friends of the bridegroom to give the woman some trifle in token of respect, so it appears, that a practice subsists in some countries for the friends of the bride’s father to give the damsel some trifle.

THE same legislator explains a present given on the bridal procession.

#### CCCCLXV.

CA'TYA'YANA:—WHAT a woman receives from the family of her parents, while she is led to the house of her husband, is called the property of a woman “given at her procession.”

WHAT is given by any person whomsoever, in honour of a bride going from the house of her father to the mansion of her husband, is a present given at her procession. Accordingly the author of the *Retnâcara* has said, ‘a present following a bride.’ What is given on account of a bride going in procession, is given at her back; for she goes before, and properly the gift follows her. Such is the popular language.

DOES her procession to the house of her husband consist in going thither at the time of the nuptial ceremony, or at that of the *final* procession of both *bride and bridegroom to the husband's house*, or at any other time? On this point nothing has been said by the author of the *Retnâcara*. But MISRA affirms, ‘at the time of the final procession of both *bride and bridegroom to the husband's house*.’ On the other hand, JĪMU'TAVA'HANA, not finding that presents are given by friends, to a bride, while she is led from the house of her father to

the abode of her husband, interprets the text otherwise; 'what a woman receives from the family of her father or mother, while she is led to the house of her lord.' It must be considered that the same sense being deduced from the phrase "what was received from a brother, or a mother, or a father," the separate mention of a present given on the bridal procession would be fruitless.

WHAT was given in token of affection by her father in law and the rest. Such is the interpretation of "given" according to the *Retnâcara*. MISRA remarks on the three sorts of property bestowed by a mother and the rest, that the meaning is obvious. The agent in the phrase, "given in token of love," may be the family of her husband; "what was given to a woman by his family:" it may therefore comprehend what is received by a woman on the second marriage of her lord. "Mother" is a term illustrative of the family of her mother, and so is father illustrative of his family. "Brother" is again mentioned, to denote his preeminence, by the same rule, by which two names of kind are at once used in a general and particular sense.

Thus, since there is no separate property of women different from those six sorts, it may be objected to the opinion delivered in the *Retnâcara*, that it was useless to say, 'the enumeration is intended to except a less number.' By parity of reasoning the same objection may be also made to what has been said by MISRA and others, "it is intended to except a less number."

#### CCCC LXVI.

CA'TYA'YANA:—ANY thing which is given to a woman by the mother or father of her husband in token of affection, and that, which is given in return of her humble salutations, is called wealth gained by loveliness.

"LOVELINESS" consists in good temper, skill in feminine arts, and the like. A present in token of affection, and what is given by the father or mother of her husband, to a woman endowed with good temper and other amiable qualities, and who humbly salutes their feet, constitute the third sort of exclusive property.

SINCE a present, given through affection, is separately mentioned by CA' TYA'YANA, does it not follow, that a present given by her husband is not the same with one bestowed through affection? No; for her husband and others may also be included in the text, since the particle "or" is used indeterminately in the expression, "by the mother or father of her husband;" and there is no difficulty in considering the last hemistich of the verse as a separate phrase: for the sense of the text is this; what is given by the mother of her husband, and by *certain* other persons, is bestowed through affection; and what is obtained by lowly salutations, is acquired by loveliness. The whole cannot be taken as a single phrase, bearing this sense, 'what is given by the mother of her husband, and by *certain* other persons, is a return for humble salutations, and that alone is called the acquisition of loveliness;' for one of the relatives would be unmeaning. It should not be objected, that a present, given in token of affection, alone constitutes the third sort of *exclusive* wealth; and that a gift to a superseded wife is not a present given in token of affection, because it is received by the woman when disposed to wrath and the like by reason of the second marriage of her lord. Still the present cannot be given without tenderness; for her husband is moved to affection by her assent to his second marriage: and the difficulty is removed by considering the term "in token of affection" as merely illustrative.

YA'JNYAWALCYA explains a present given to a woman on the second marriage of her lord (LXXXVII). She, above whom a marriage is contracted, is a superseded wife (*adbibinná*). So the *Retnácara*. *Adbi* is therefore used in the sense of above; and *bédana*, in the sense of taking a bride, according to the literal meaning of the verb *bīdri*, take. Consequently the second marriage of her husband is supercession of a wife; and a present received on the second marriage of her lord shall be so much only, as is promised to console her for the supercession. "But, if *such* wealth, as is usually given to women, had been delivered to her, she is held entitled only to a moiety or part;" that is, the sum promised shall be completed by wealth previously and subsequently bestowed. If a larger sum had already been given, some trifle must be delivered to fulfil the promise of a present.



So much only, as is given to the wife who is now espoused, must be given to the wife who is superseded.

SRI' CRISHNA TERCA'LANCA'RA.

THE word "equal" signifies so much only as is expended on the second marriage.

VIJNYA'NE'SWARA.

IN the second \* of these three expositions there is *this* defect; not she, but another woman, is the person to whom the sum promised is given; and it would not be a present on supercession by the second marriage of her lord, since supercession is not the cause of giving that sum: neither is the second marriage the *immediate* cause of giving a present to the first wife. When the second nuptials have taken place, and nothing has been expended on them, since nothing would in that case be given according to *this (third)* opinion, the second marriage, jointly with the expense of it, is not the *immediate* cause of giving a present to the woman: her being the first wife is the sole cause. Thus there is no certainty in these two interpretations. It cannot be a positive precept, that the term "equal," though parity be always requisite, shall refer only to the amount expended or the like. Again; if that, which is given to a second wife endowed with preeminent qualities, must also be given to the first wife, this would contradict common sense. A rule of practice should be formed on due consideration of *these difficulties*.

CCCCLXVII.

VISHNU:—THE property of a female is that, which her father, mother, friend, or brother has given her; what she received in the presence of the nuptial fire; *on the bridal procession*; or when her husband took a second wife; what her husband agrees to be her perquisite; and what is received from his or her kinsman as a gift subsequent to the marriage.

It should not be argued, because more than six sorts of property are men-

\* The manuscript has "first;" but the objection is only applicable to the second. T.  
tioned

tioned in this rule of *Viśṇu*, that the text of *Menū* must necessarily be considered as an exception of the less number. Friends and the rest are comprehended in "the family of her father." "Received" (*upagata*) may signify what is bestowed on account of her coming, that is, a present given on the bridal procession. The present, received when her husband took a second wife, must be reconciled, in the mode abovementioned, *with one of the other sorts enumerated*. Her perquisite and a gift subsequent are in effect given by her husband and the rest.

### CCCCXLVIII.

**CA'TYA'YANA:—**WHAT is received by a woman, after marriage, from the kinsmen of her lord or from those of her parents, is called "a gift subsequent:"

2. But *Bhrīgu* gives the name of "subsequent gift" to any thing received by her after the nuptial ceremony, from her husband himself, or from her parents, through pure affection.
3. THE trifle, which is received by a woman as the price or reward of household labour, of using household utensils, of keeping beasts of burden, of watching milch cattle, of preserving ornaments of dress, or of superintending servants, is called her "perquisite."

CONSEQUENTLY what is received after marriage, from the family of her husband, mother, or father, and what is received from her husband himself, from her mother, or from her father, is a gift subsequent. Such is the explanation approved by *Jīmu'tava'hana*. To include a present given before marriage in the enumeration of several property, what was given by the mother, father, or brother, has been already mentioned. It should not be objected, that still the word "son" in the rule of *Viśṇu*, as read by *Misra*, ("that which her father, mother, son, or brother has given her;") is unmeaning. That word may signify son by another wife of her husband.

the life of their father, or on a distribution among brothers *after his demise*. Or else, upon the reasoning delivered under the title of subtraction of gift, if the sole property of the wife be acknowledged, and her independent power over it *be also admitted* on the suggestion of JĪMU'TAVA'HANA, then likewise that wealth is, incontestably, wealth given by her father. But `SU'LA-PĀ'NI, CULLU'CABHATTA and the rest admit, that the presents received before the nuptial fire, ~~or on the~~ <sup>on the</sup> bridal procession, may have been given by her father and the rest. Here, since it is improper to bar the comprehension of strangers in the term "and the rest," presents received before the nuptial fire, or on the bridal procession, are distinct from those which are given by her father and other relatives. Consequently the separate property of married women is incontestably six fold. What was received from a father, and what was obtained from a mother, are therefore two sorts of separate property; what was given by a brother or by a kinsman, is one sort; *these* and what was obtained from the family of her husband, a present accepted before the sacrificial fire, and one received on the bridal procession, are six sorts of separate property held by women.

JĪMU'TAVA'HANA explains "given by a kinsman," bestowed by a maternal uncle or the like. `SU'LA-PĀ'NI expounds it, given by a kinsman of her mother, or by a relation of her father. Only six sorts of separate property held by women are *yet seen, how then is it said, this is an exception of a less number?*

NA'REDA also propounds six sorts of separate property held by women.

#### CCCCCLXIX.

NA'REDA:—GIFTS to a woman at the nuptial fire, at her procession, by her husband, her brother, her father, or her mother, constitute her six fold property.

A GIFT by her husband includes the present given in token of love, as propounded by MENU. Again; husband, and other terms expressive of connexion or relation, signify also their families: but the word "brother" denotes kinsman, as in a former instance; or it literally signifies "brother,"

*the*

*the consequent repetition being justified by the same rule, by which two names of kind are at once used in a general and particular sense.*

## CCCCCLXX

CATYA'YANA:—BUT whatever wealth she may gain by arts, *as by painting or spinning*, or may receive, on account of friendship, from any but the kindred of her husband or parents, her lord alone has dominion over it of her other property she may dispose *without first obtaining his assent.*

“ARTS” in this text, is expressed in the plural number with the sense of “and the rest.” Consequently her husband has independent power over all other wealth except the six fold property of a woman. What then is the rule in respect of an estate devolving on her from her father or other relative *on failure of male heirs?* It should not be answered, *she is subject to the control of her husband*, even in respect of this estate, because it is not included in the six fold property of women. Since the eventual heir of her father and the rest is, at a subsequent time, sole heir of wealth which had devolved on her from her ancestors, it contradicts common sense, that this should be subject to the control of her husband. To the question thus proposed, the answer is, it is subject to his control, so long only as it remains in the possession of his wife, afterwards it shall be received by the legal heir of her father and the rest.

ON the opinion of those, who acknowledge the ownership of her husband in wealth acquired by his wife, not simple control over it, how can the legal heirs of her father succeed on the death of the wife, since her husband's title is not divested so long as he live? In truth JIMUTAVAHANA alone contends for the succession of her father's heirs, after the death of the daughter, to the patrimony, which devolved on her *by the failure of male issue*, and he does not acknowledge the property of the husband in the wealth of his wife but those, who do acknowledge the husband's claim, must not admit the succession of her father's heirs to the patrimony, which has devolved on the daughter, for no text nor reasoning shows it.

As for the argument, that, since this occurs in the succession of a wife, who is the first entitled to the estate of one who leaves no male issue by males, the same should be also established in other cases, when a daughter or the like has succeeded, that argument would be also intruded in other remote cases, *such as the* succession of a daughter's son, or of a brother, and that is not founded on positive ordinances, but established by authors on the sole suggestion of their own understandings it is not even noticed by CHANDESWARA and the rest. On the opinion of those, who maintain the property of both *husband and wife* in her wealth, there is no difficulty whatsoever, for it may be established, that the husband's title is lost on the *divestiture of his wife's*.

“ FROM any other ” (CCCCLXX), in that, which is received from any but the kindred of her father, mother, or husband, and in that, which is acquired by arts, her husband has ownership, and has independent power over it, that is, he may with propriety seize it, even though suffering no distress. Hence, though it belong to the woman, it is not her separate property *in contemplation of law*, for she is not independent. It is a remark of JĪMU'TAVA'HANA, RAGHUNANDANA and the rest, that a wife has property subject to the control of her husband, in wealth devolving on her *from her own family*. That it becomes the property of her husband, is stated as the opinion of ancient authors. But some lawyers argue, that the estate of her father, devolving on his daughter *by the failure of male issue*, becomes her separate property, for the patrimony, which devolves on a daughter *by the failure of male issue*, is not mentioned in the text above cited (CCCCLXX); and a subsequent precept of CA'TIAYANA (CCCCLXXV) states simply “ what a woman receives ” and this, they hold to be the meaning of JĪMU'TAVA'HANA himself.

THAT *last induction* we do not admit, for it is no where seen, that a woman has independent power over any thing which is not given to her the expression, “ of her other property she may dispose,” (CCCCLXX), declaring that only to be the *separate* property of a woman, over which her husband has not independent power, it is a just *inference*, that he has such power over that only, which is different from the six fold property of women as

propounded by MENU and the rest. But, if it be affirmed as the opinion of JĪMU'TAVA'HANA, that "this is a third kind of property;" (thus wealth, over which a woman has independent power, and which is called her separate property, is the first kind; that, which was acquired by arts or the like, and which is subject to the control of her husband, is the second kind; the wealth, which has devolved on her *from her ancestors*, is the third sort, and both *husband and wife* have independent power over it): that could only be admitted, *as the opinion of JĪMU'TAVA'HANA*, if it were confirmed by reasoning; but it contradicts common sense. It has been thus remarked in books, that the observation of authors, 'the enumeration is only intended to except a less number,' is thus contradicted; for *all* sorts of *exclusive* property held by women, fall within the six denominations which have been mentioned. The observation, that the intention is to except a less number, is not pertinent; for the six sorts of property are described by their respective names. Nor is it to the purpose, that the same CA'TYA'YANA, who declares the property of women to be six fold, exhibits a greater number; for his meaning is, that every thing, which is received by a woman, before or after marriage, from her father, or from his relations, or from the family of her husband, is her property given by affectionate kindred. The object of this *remark* is the food, vesture, and the like, which will be declared *to be the exclusive property of a woman*.

SOME lawyers hold, that the number specified is affirmed to be an exception of a less one, because the perquisites, mentioned in the text of DEVĀLA (CCCCLXXVIII) and in a precept of VIŚHNU above cited (CCCCLXVII), constitute an additional sort of *exclusive property*: for example; according to the interpretation of JĪMU'TAVA'HANA, what is given as a bribe to a woman, by householders, by artificers, or by others, to send her husband and the rest to perform work required by them, is her perquisite; it is the price or reward of labour, because the purpose is to entertain a labourer. The exposition delivered in the *Retnācara* is similar: but the interpretation of MĪSRA should be followed. Consequently this wealth, being given by others than the kinsmen of her father and the rest, does not fall within the six fold property of women. It should not be answered, this is only intended by the text "whatever she may receive, on account of friendship,

friendship, from any but the kindred of her husband and parents " (CCCCLXX). That phrase is only applicable to a different case.

*To the argument of these lawyers, the answer is, if perquisite, which is an obscure term, can by any interpretation be included in the six sorts of property, why should the texts of sages be otherwise expounded by affirming an unusual sort of property exceeding that enumeration? For what a kinsman, being much pleased with her management of household affairs, bestows on a woman, is her perquisite; as that, which is given in return for humble salutation, is her property gained by loveliness: these and other acquisitions may be considered as distinct sorts of wealth given by her husband's father and the rest.*

THE sense of the text (CCCCLXX) is this; what is received by a woman, on account of work in household affairs and so forth, is the price of her labour, as it were, her wages (for such is the subject of the text); what is so given to a woman, is called her exclusive property under the name of perquisite. Here "house" is obvious; "household utensils" are brooms and similar things; "beasts of burden" are oxen and the like; "milch cattle" are cows and the rest; "ornaments of dress" are things worn for decoration; workmen are slaves or servants: the meaning in effect is, what is given through satisfaction at her skill in sweeping with brooms, in keeping and watching cattle and the rest, in commanding the slaves, and so forth; or what is given as a bribe to undertake these several employments. But VYĀSA otherwise defines a perquisite (*śulka*).

JĪMŪTAVĀHANA.

#### CCCCLXXI.

VYĀSA:—THAT, which is given to bring the bride to the family of her husband is her perquisite, which is given as a bribe or the like, that she may cheerfully go to the mansion of her lord.

WE hold, that authors have otherwise expounded the texts of legislators, considering that also as the exclusive property of women, which is given to  
wives

wives and others as a bribe to send *their husbands and the rest* to perform work, such as thatching a house and the like; or *they have delivered such an exposition*, admitting some difference in the gifts subsequent to marriage, which have been specially defined. The difference in the two interpretations should be examined; no argument is found to show why a woman should not have independent power over that, which she has gained by arts, or which has been given to her by a stranger on a religious consideration or through friendship, but should have independent power over *that which was received as a bribe*.

“ Food and vesture;” what is given for her support: this coincides with a subsequent text (CCCCCLXXV 2). “ Ornaments;” ornamental apparel. “ Perquisites;” what is given to a damsel on asking her in marriage. “ Wealth received;” that which is obtained from a kinsman. All this is the exclusive property of a woman.

MISRA and CHANDÉSWARA.

THE perquisites, which have been already explained, may be also understood to be meant.

#### CCCCCLXXII.

APASTAMBA:—ORNAMENTS are the exclusive property of a wife, and so is wealth given to her by kinsmen or friends, according to some legislators.

THE meaning is, ‘ wealth, given to her by friends, is the exclusive property of the wife.’ “ According to some legislators;” this is mentioned to show a regulated alternative: what is given by kinsmen on the marriage of their relative, at the time of the nuptial ceremony or the like, is the exclusive property of a woman; but her lord has dominion over that, which is presented at any other time. Accordingly CHANDÉSWARA remarks on the phrase, “ and so is wealth given to her by kinsmen or friends, according to some legislators,” that wealth received at the nuptial ceremony, which is called a present given on account of marriage, is also the exclusive property of a wife.



## CCCCLXXIII.

MENU and VISHNU, on the subject of ornaments :—Such ornamental apparel, as women wear during the lives of their husbands, the heirs of those husbands shall not divide among themselves, they, who divide it among themselves, fall deep *into fin*.

THAT ornamental apparel, which is worn by women during the lives of their husbands, with their assent, the sons and the rest shall not divide when partition is made after the death of those husbands, they, who divide it, become sinners.

CULLU'CABHATTA.

IN so much only is that ornamental apparel the exclusive property of a wife So the *Meabatu'bi*, the author of the *Pracāsa*, CHANDÉSWARA, VA'CHESPATI MISRA, RAGHUNANDANA, and others.

THE assent of her lord is indispensably necessary, and it is also requisite, that this apparel should have been the several property of her husband, as declared by MENU

## CCCCLXXIV.

MENU —A WOMAN should never make a hoard from the goods of the kindred, *which are common to her and many*: or even from the property of her lord, without his assent.

WIVES and other women should never make a hoard for their own ornamental apparel and the like, out of the wealth of the family, *which is common to many*, *namely* to brothers and the rest, nor should a hoard be made even from the property of her husband, without his acquiescence hence this does not become the exclusive property of the woman

CULLU'CABHATTA.

BY saying "women should never make a hoard," it is forbidden to take such goods, but it is not suggested, that, if the chattels be taken, the object

is unattained : why then is it said, ‘ this does not become the exclusive property of a woman ? ’ The answer is, since a right cannot be gained, if she take the effects without the assent of the owner, this does not become her exclusive property : but, if none afterwards molest the woman, who has so taken the goods, a title is gained by ‘ occupancy ; for the maxim expresses, “ what is not forbidden, is permitted.” Else, the enunciation of the text would be superfluous, since gift could only take place by express assent in these words, ‘ be this thine.’ Or the sense of the text may be this ; a title is only gained by assent thus expressed, “ wear this apparel.” It should not be objected, how can it become her property, since she has not acquired it ? Habitual wear is considered as a mode of acquisition under the authority of the text. When another does not oppose the use of that apparel, the *tacit* permission of wearing it exists ; else why is it not resisted ? But, if he do not oppose it, fearing to arouse anger or to cause a breach of friendship, then indeed it does not become the property of the woman, notwithstanding such silent assent.

BUT CHANDEŚWARA, referring the word *goods* to the proximate term family or kindred, says, women should not make a hoard, or deliberately take wealth, out of goods common to many, without the assent of the owners, nor even take it from the property of her husband which is not common to him and another family, without the assent of the owner. It follows that, if she take it from property belonging to a numerous family, by consent of all the owners, it legally becomes her exclusive property : but that is not deduced from the literal sense of the text ; and is therefore unacknowledged by CULZU‘CABHATTA. It should not be argued, this is suggested by the precept, “ the heirs of those husbands shall not divide it among themselves ; ” because otherwise, it could not be supposed, that apparel, being the sole property of her lord, might be divided by other heirs, and the prohibition would therefore be unmeaning. Heirs may here signify sons ; it is consequently ordained, that sons should acknowledge ornamental apparel worn by the woman with the assent of her lord, to be the exclusive property of their mother. It is declared by MENU and VISHNU (CCCLXIII), that ornaments, worn by mutual consent, are indivisible. From the concurrent import of these texts, CHANDEŚWARA has affirmed this. Consequently

quently those ornaments, which are worn by the wives of coheirs with their mutual consent, become the exclusive property of those women.

If one brother have conceded ornamental apparel to the wife of another, and afterwards that other brother, *namely* the husband of the woman, who is already provided with such apparel, refuse to concede ornaments to the wife of that *first* brother, what shall be the consequence? The ornaments already worn by one have legally become indivisible property under the authority of the text (CCCLXII); the king, however, shall compel the concession of suitable ornaments to the wife of the *first* brother; or else when partition is finally made, a sufficient sum must be first set apart to provide such ornaments, and they may then proceed to partition. But, if they be destitute of wealth, when a separation takes place, another rule must be followed.

SUCH is the nature of exclusive property held by women; they, not their husbands and the rest, have independent power over it, as owners of that property: the following texts declare it.

CCCCLXXV.

CA'TYA'YANA:—WHAT a woman, either after marriage or before it, either in the mansion of her husband or of her father, receives from her lord or her parents, is called a gift from affectionate kindred;

2. And such a gift, having by them been presented through kindness, that the women possessing it may live well, is declared by law to be their absolute property:
3. The absolute exclusive dominion of women over such a gift is perpetually celebrated; and they have power to sell or give it away, as they please, even though it consist of lands and houses.
4. NEITHER the husband, nor the son, nor the father, nor the

the brother, have power to use or to aliene the legal property of a woman;

5. And, if any of them shall consume such property against her own consent, he shall be compelled to pay its *value with* interest to her, and shall also pay a fine *to the king*;

6. But, if he consume it with her assent, after an amicable transaction, he shall pay the principal only, when he has wealth *enough* to restore it\*.

7. **WHATEVER** she has put amicably into the hands of her husband afflicted by disease, suffering distress, or sorely pressed by creditors, he should repay that by his own free will.

“ IN the mansion of her husband ;” the words are so connected. “ From her brother † or her parents ;” this is merely illustrative: hence, what is received by a woman, either after marriage or before it, in the mansion of her husband, or in the house of her father, from her mother, from her father, or from other *persons*, is called a gift from affectionate kindred.

CHANDÉSWARA.

MISRA delivers a similar exposition; but, instead of saying “ from other persons,” he says from her own kindred or from the relations of her lord. There is this difference.

THAT, which is received from affectionate kindred (*sudāya*), is the gift of affectionate kindred (*saudāyika*).

JĪMU'TAVA'HANA.

THAT, which is received from an affectionate father, mother, or husband, or from the kindred of these, is a gift from affectionate kindred. “ Through kindness;” through tenderness.

RAGHUNANDANA.

\* Book I. ♣ LXXIII.

† In a former citation the text was read ‘ husband ’ (*bharin* not *bhṛta*).

T.

SUCH a gift is declared by law to be the absolute property of a woman. She may therefore consume it without the assent of her husband or guardian. As for the remark, that the absolute exclusive dominion of women over such property is an explanatory precept, whence it follows, that their husbands have not absolute dominion over that property, and that the legislator himself so explains his meaning (CCCCLXXV 4); the remark is erroneous, for it would contradict the design, to propound an explanatory precept without first delivering a text suggesting the absolute dominion of women over such property. That a precept is explanatory is deduced from the priority of another ordinance.

THE legislator next declares, that a woman may sell or give away her own separate property, without the assent of any other person (CCCCLXXV 3); "even though it consist of lands and houses." A woman has absolute exclusive dominion over such gifts consisting of lands and houses, except such immoveables as her husband gave her. *The Retnâcara.*

NA'REDA propounds this exception of such immoveables as her husband gave her.

#### CCCCLXXVI.

NA'REDA:—PROPERTY, given to her by her husband, through pure affection, she may enjoy at her pleasure, after his death; or may give it away, except land or houses.

BUT some lawyers, considering the two subjoined texts of CA'TYA'YANA as relating to the separate property of women, because they are placed under that title, affirm, that the precepts must be thus expounded; wealth given by her husband, even though it consist of gems and the like, she must not, while he lives, give to any person, nor intrust it to another; by the authority of the text. But immoveable property she must not give to any person whomsoever, even after the death of her husband.

#### CCCCLXXVII.

CA'TYA'YANA:—WHAT a woman has received as a gift from  
4 A her

her husband, she may dispose of at pleasure, after his death, *if it be moveable*; but, as long as he lives, let her preserve it with frugality: or she may commit it to his family.

2. THE childless widow, preserving inviolate the bed of her lord, and strictly obedient to her spiritual parents, may frugally enjoy *the estate* until she die; after her, the legal heirs shall take it.

“THE childless widow;” considering that the several property of a woman may be resumed, if she do not preserve unsullied the bed of her lord (CCCCV2), the legislator propounds this text. This maxim being true in respect of the several property, over which a woman has exclusive dominion, the same is equitable in respect of an estate devolving on her by the failure of male issue. Or this text may not solely relate to the peculiar property of a woman, but to any effects which she holds as such thus according to CHANDESWARA and the rest, there exists a coincidence with the last text; but, according to JIMUTAVA'HANA, with both. These lawyers so expound the law.

THE author of the *Pracāsa* announces the opinion of CHANDESWARA, HELAYUDHA and the *Pāryāta* say, both these texts relate to the peculiar property of a woman, because they are placed under that title. Gems and the like, given by her husband, must not be aliened whilst he lives, those, which belonged to him, but devolve on her by failure of male issue, and both sorts of immoveables which had belonged to her husband, must never be aliened by a woman, such is the opinion of JIMUTAVA'HANA. Gems and the like given by her husband, or which have devolved on her from him, in default of male issue, a woman may give away at pleasure, both sorts of immoveable property, which had belonged to her husband, she must not give away, but she may enjoy it under the text which declares property common to the married pair, all effects belonging to her husband, which she has received, she must preserve with frugality as long as he lives. such is the opinion of CHANDESWARA and the rest. These opinions should be reviewed by the wise.

WHAT is acquired by the wife, during the state of deprivation of her husband, is also her peculiar property. How can it be so, since it is exclusive of the six sorts? *The answer is*, authors do not acknowledge the *restrictive* enumeration of six kinds; and even though it were admitted, the difficulty would be removed by affirming, *that* this maxim is true of a woman, who is herself sole mistress of the wealth acquired. Who has a right to that which is acquired by a woman before marriage? A daughter may be also comprehended in a text formerly cited (Book III, Chap. I, v. LII 1), because the masculine gender is not there used in a determinate sense, or because the particle "and" connects the terms with that, which is unexpressed; or lastly because the term "*son*" is illustrative of a *general meaning*; her father has therefore property in the wealth acquired by her, as he has a claim to the son produced by her before marriage: such is the method founded on the opinion of ancient authors. It should be thoroughly examined by the wife.

BUT, according to JĪMU'TAVĀHANA, all wealth acquired by a woman is held by her as her exclusive property; as that, which is gained by a married woman, is subject to the control of her lord, so is wealth acquired by an unmarried woman subject to the control of her father, because she also belongs to her sire: hence, though *subsequently* married, she alone can enjoy or aliene such wealth with the assent of her father. But, after the death of her husband, no person has dominion over a widow; her spiritual parent, that is, her father in law, or other guardian, merely supports her: hence she has absolute power over that, which she then acquires. This should be held demonstrated.

THE legislator declares, that her husband has no power to use or aliene the legal property of a woman (CCCCCLXXV 4). On this subject DE'VALA propounds a special rule.

#### CCCCCLXXVIII.

DE'VALA:—FOOD and vesture, ornaments, perquisites, and wealth received by a woman *from a kinsman*, are her own property: she may enjoy it herself; and her husband has no right to it, except in extreme distress:

2. If he give it away on a false consideration, or consume it, he must repay the value to the woman with interest; but he may use the property of his wife to relieve a distressed son.

"Food and vesture;" funds appropriated to her support. "Ornaments;" ornamental apparel. "Gain, or wealth received;" that which is obtained from kinsmen. "Perquisites," wealth given to a damsel on asking her in marriage.

The *Retnâcara* and *Gbintâmeni*.

BOTH sorts of perquisites mentioned by CA'TYA'YANA, and other kinds of *exclusive property held by women*, must also be comprehended in the text: this *sort* is mentioned by both commentators to show, that this also is her perquisite; other kinds of female property must be comprehended in the text; considering the terms of it as illustrative of a general meaning.

WHEN a husband, taking the property of his wife under pretence of some indispensable duty or the like, gives it away on immoral considerations, or consumes it, he must repay the value with interest: but the property of a woman may be taken without her assent to relieve a distressed son.

The *Retnâcara*.

CONSEQUENTLY interest must be paid on the property of a woman, which is taken, after an amicable transaction, for the purpose of giving it away on immoral considerations; without the consent of women, their property must not be aliened on such considerations, nor consumed; but that may be done to relieve a son.

The *Gbintâmeni*.

"HE may consume it;" hence it is deduced, that, although it bear no interest, it need not be repaid. The subjoined text makes this evident.

CCCCCLXXIX.

YA'JNYAWALCYA:—If a husband, in a famine, or for the performance



performance of some indispensable duty, or during extreme illness, or while a creditor keeps him confined, should appropriate the wealth of his wife, he shall not, *while his distress lasts*, be compelled to restore it against his will.

FOR some duty, which must indispensably be performed. The wealth of his wife taken to obtain relief in extreme illness, which prevents the performance of a duty, need not be repaid to her.

The *Retnacara*,

“ PREVENTING” is an epithet of illness; the meaning is, precluding the performance of a duty. Consequently the separate wealth of his wife, taken by the husband, to accomplish the performance of an indispensable duty, which cannot otherwise be fulfilled, need not be repaid against his will.

The *Vivāda Chintāmeni*,

SOME lawyers add, what is taken in the distress of a son, even though it be not such as to prevent *the performance of duties*, the husband need not restore against his will, for the epithet “preventing” does not occur in the text of DE’VALA. that only, which is taken to obtain relief from such disease, afflicting, any other than a son, which does impede *the performance of duties*, need not be repaid.

IN the *Dīpācalica* the term is explained, while a creditor keeps him confined, preventing his eating and so forth. It is supposed in the *Dīpācalica*, that extreme illness is here denoted by the word disease. Considering this phrase as illustrative of a general meaning, CHANDESWARA holds, that confinement by a creditor is comprehended in the text: consequently the purport of both commentaries is the same. In fact, whenever the performance of duties is impeded, a husband need not restore the wealth of his wife then taken on failure of other means of relief. Since the word “husband” is here exhibited, this rule relates to him alone, and to no other person. This should be held demonstrated. JI’MUTAVA’HANA fur-

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ther observes, a husband, unable to subsist in a famine or the like without using the property of his wife, may then, but at no other time, appropriate her wealth

“ AND, if any of them shall consume such property &c’ (CCCCCLXXV 5), any one of them, her husband, her son, or any of the rest their punishment should, according to circumstances, consist in harsh reproof or the like But MENU directs, that others shall suffer the punishment of a thief.

### CCCCCLXXX

MENU —WHETHER barren, or deprived of their sons, or destitute of kindred, the care of faithful wives must be the same, and of women whose husbands are absent, or who suffer distress.

2. On those men, whether kinsmen, or others, who seize the property of such women, while they live, a virtuous king, must inflict the punishment of a robber.

“ BARREN, sterile consequently, barren women, those, who have lost their sons and have no kinsmen on the father’s, mother’s, or husband’s side, and married women, who are faithful to their lords, must be so protected, that is, must be cherished like infants and so must women, whose husbands are absent, or who have been forsaken by them without just cause On those men, who seize their property by force or fraud, while they live, a virtuous king must inflict the punishment of a robber Such is the exposition approved by CULLUCABHATTA “ Kinsmen’ is an expression merely illustrative which must be extended to others also.

“ BUT, if he consume it with her assent he shall pay the principal only, when he has wealth enough to restore it” (CCCCCLXXV 6) there is consequently no harm, if he do not repay the loan while he remains indigent. Accordingly a text, denying interest on the property of a woman, has been cited in the book on loans and payment (Book I, v LXXII) and this return of the principal only must be understood in a case different from the relief

relief of a distressed son, and in the instance of a gift on immoral considerations with *the assent of the woman*. By thus directing the restoration of such wealth with interest *in certain cases*, the supposition, that the husband has a title in the sole property of his wife, as she has in the sole property of her husband, but that she has a further independent power over that which is called her exclusive wealth, is thus contradicted by directing the restoration of her property with interest *in certain cases*; for wealth, which also belonged to her own lord, could not become a loan *to him*.

“WHATEVER she has put amicably into the hands of her husband afflicted by disease, suffering distress or calamity &c.” (CCCCCLXXV 7 :) consequently, as his wife, seeing his distress, *voluntarily* gave her own property, so should her husband also repay it, of his own accord, without a demand. Accordingly it is observed in the *Retnâcara*, her husband and the rest should voluntarily repay it. The sense of the text is this; her own property, which has been lent by a woman, seeing her husband or kinsman afflicted by disease or the like, he should voluntarily repay: so the *Ghntâmenti*. Consequently, say some lawyers, this disease is not such an extreme illness as impedes the performance of duties, nor does the creditor obstruct the performance of them; the text does not therefore contradict YA'JNYAWALCYA. That is wrong; for it contradicts the maxim, “a distinct import is inadmissible when coincidence is possible.” Thus the sense is; he shall repay it by his own free will, not against his consent: the same is declared by YA'JNYAWALCYA, “he shall not be compelled to restore it against his will”. This also is meant in the *Retnâcara* and *Ghntâmenti*.

#### CCCCCLXXXI.

CATYA'YANA:—YET more; if he have taken a second wife, and no longer give his first wife the honour due to her, the king shall compel him, even by violence, to restore her property, though it was put amicably into his hands.

2. If suitable food, apparel, and habitation cease to be provided for a wife, she may by force take her own property, and a just allotment *for such a provision*, or she may, *if he die*, take it from his heir:

3. This

3 This is a law of LIC'HITA, but after receiving *her own property and 1st allotment*, she must reside with the family of her husband, yet, if afflicted by disease and in danger of her life, she may go to her *own kindred*.

If she have given her own wealth to relieve him in sickness or the like, or have amicably bestowed it in a season of calamity, and afterwards her husband, cohabiting with any other wife at pleasure, does not give her due honour in season or out of season, or if he do not give her food and apparel, in either case, she may by force take back her own property, though given when she saw her husband afflicted by disease or the like, and may take the allotment to which she is specially entitled. Consequently she may also take from his heir, that is, from the brother or other near kinsman of the proprietor, the food, apparel, and the like, which ought to be received by her in that secular order.

This must be affirmed to be an ordinance of the legislator LIC'HITA, or this is a law of the written (*lic'hita*) code. But, after receiving this property, she must live with the family of her husband, and not go elsewhere, inflamed with anger, for she ought to reside with her husband's family only. If sickness supervene, she ought to take remedies there only, but, if a violent distemper occur, by which the loss of life becomes probable, and her husband does not provide suitable remedies, she may go to the family of her kinsmen, that is, to her father's family. The text is so expounded by VACHESPATI MISRA following CHANDRASEKHARA.

If a husband, although wealth have been amicably given by his wife, do not show her due honour, the king shall compel him, by force, to restore her property, such is the sense of the first verse. If he do not supply his wife with food and apparel, the king shall compel him to give her a just allotment for food, raiment, habitation, and the like, out of his own property. Such is the sense of the second verse. This remark of SRI CRISHNA TERKALAKARA, commenting on the treatise of JIMUTAVAHANA, is also accurate. But others consider this text (CCCCXXXI 2) as relating to widows consequently, if brothers in law and the rest do not give suitable food

food and apparel to the widow of their brother, she may claim her just allotment from her husband's brethren. The assignment of a share consists of a provision for food and clothes; hence the appositeness of *certain* texts, which declare the *widow's* right of succession to the estate of him who leaves no son, and of other precepts, which ordain partition, and which allot a mere maintenance, is obvious.

VYA'SA declares how much wealth ought to be given by a husband to his wife.

### CCCCLXXXII.

VYA'SA :—A PORTION, amounting to two in the thousand, out of the whole estate, should be given to a woman; that, and whatever wealth is bestowed on her by her husband, she may use as she pleases.

THE word "husband" occurring in the last hemistich, the same term is presented in answer to the question arising on the first, "by whom should that portion be given?"

JIMU'TAVA'HANA.

HENCE, after the death of a brother, the surviving coheirs, having given two thousand *panas*, or two *panas* in the thousand (*for the term is explained in both senses*), may divide the residue among themselves: such is the meaning of the first hemistich. Lawyers, who affirm, as the import of the last, that a woman has independent power over wealth given by an affectionate husband, even though it be the whole of his property, are thus contradicted; for, were such an import established, it would be an unprecedented exposition; for the word portion or heritage (*daya*), taken in its derivative sense, signifies only wealth in general. More may therefore be given by any other person. If more than two thousand *panas*, or two in the thousand, be given, does that allotment legally become the exclusive property of the woman? CHANDESWARA considers it as invalid: for he has cited the text of VYA'SA with this observation premised, "the legislator shows how much wealth may be given by her husband, over which a

woman

BUT the author of the *Pracāsa* says, more than two thousand *panas* must not be given to the wife of lepers and the rest, entitled to food and apparel only, and residing apart on food separately prepared.

IN this case, since the maintenance is not regulated, the limitation of a sum would be irrelevant; it seems therefore, that this allotment is given by the brothers or other kinsmen of their husbands, *to be held by these women* as their exclusive property. But the allotment for such women residing with the family and partaking of the same food is not limited, for due honour should be shown to them as well as to the wives of other coheirs. Since these three opinions, being contradictory, cannot all be followed in practice, the opinion of the author of the *Pracāsa* should be adopted, because it is *the most* ancient: other opinions have been here inserted for the sake of elucidating this, and of thereby obviating the objection which modern authors have set up against it.

IF the father die after promising to give, as exclusive property, such a sum as may be *legally* bestowed on his wife, CA'TYA'YANA ordains, *that it shall be delivered by his sons.*

#### CCCCCLXXXIII.

CA'TYA'YANA:—WHAT has been promised to a woman by her husband, as her exclusive property, must be delivered by his sons, provided she remain with the family of her husband; but not, if she live in the family of her father.

CONSEQUENTLY there is no harm in not delivering to a woman, who resides of her own authority with the family of her father, what has been promised to her as her exclusive property.

#### CCCCCLXXXIV.

CA'TYA'YANA.—BUT a wife, who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of the property before described.

KINSMEN,



KINSMEN, resuming the exclusive property of such a woman, may take it to themselves.

*The Vivāda Chintāmeni.*

“ ACTS injurious to her husband ;” the administering of poison or the like. “ Who has no sense of shame ;” who goes to other towns on false pretences or the like. “ Who destroys his effects ;” who incurs expenses for immoral purposes.

WEALTH was conferred for the purpose of defraying sacrifices ; therefore distribute wealth among honest persons, not among women, ignorant men, or such as neglect their duties.

THIS text is cited by JI'MU'TAVA'HANA and the rest, under the title of succession to the estate of him, who leaves no male issue (CCCCXIII) : it is likewise inserted by CHANDESWARA in this place. Consequently “ distribute” here positively intends donation and the taking of an inheritance. The distributor is the King or any other person. Or the denial of donation and of succession to an inheritance *are rival* ; the one expressed, the other implied by parity of reasoning. But let him not distribute it among women, ignorant men, or those who neglect their duties ; such is the construction of the sentence. Consequently peculiar property should not be given to a woman, solely by the will of the donor, but should be conferred with due attention to her good qualities and the like, and in proportion to her wants.

## S E C T I O N II.

ON SUCCESSION TO THE EXCLUSIVE PROPERTY OF A  
WOMAN.

## A R T I C L E I.

## ON THE SUCCESSION OF HER ISSUE MALE AND FEMALE

SONS and daughters shall jointly succeed to such property left by their mother, under the text of MENU (IV) He himself makes that evident

## CCCCLXXXV

MENU —ON the death of the mother, let all the uterine brothers and the uterine sisters, *if unmarried*, equally divide the maternal estate *each married sister shall have a fourth part of a brother's allotment.*

THE text of NAREDA (CCCCLXI) will be referred to wealth received on account of marriage It should be understood that debts must of course be paid, for the succession is similar to the inheritance of the paternal estate, and a daughter is also considered as an heir

## CCCCLXXXVI

YAJNYAWALKYA —LET the sons, after the death of their parents, equally share the assets and equally pay the debts of the deceased what remains of a mother's fortune, after payment of her debts, her daughters inherit, if there be no daughters, their issue.

THE words "sons shall divide," and "after death," are repeated from

the first hemistich; consequently, after the death of their mother, sons and daughters shall divide her fortune: such is the construction of the phrase. But, according to ancient authors, "after the death of their parents," must be repeated in the second hemistich; for a son, not being his own master, while his father lives, cannot regularly divide that fortune. The same likewise is nearly deduced from the interpretation of JÍMU'TAVA'HANA and the rest.

OR unmarried daughters only shall take an equal share with a son, not a married daughter.

## CCCCCLXXXVII.

VRĪHASPATI:—THE property of a married woman goes to her sons, but her daughter, if unmarried, has an equal share of it; if she be married, she inherits not *in that case* the wealth of her mother.

THE term "offspring" here relates to her sons.

CHANDE'SWARA, JÍMU'TAVA'HANA and the rest.

## CCCCCLXXXVIII.

SANC'HA and LIC'HITA:—ALL uterine brothers and virgin sisters are entitled to equal shares of *the wealth left by their mother*.

## CCCCCLXXXIX.

DE'VALA:—A MARRIED woman being deceased, her property goes to her son and *unmarried* daughter, as parceners: if she leave no issue, let her husband take it, her mother, her brother, or her father.

## CCCCXC.

GO'TAMA:—A WOMAN'S estate goes to her daughter not betrothed, *then* betrothed only, or *lastly* married.

ON this text of GO'TAMA, and taking the literal sense of the precepts of NA'REDA and YA'JNYAWALKYA, daughters succeed first to the separate property of a woman; on failure of them, a son: but that is contradicted by MENU, VRĪHASPATI and DE'VALA; for they expressly declare the equal title of the son and daughter. Thus a son succeeds to the separate estate of his deceased mother, but an unmarried daughter has an equal title with him; on failure of either of them, the other inherits *the whole*: in default of daughters not affianced, one, who is verbally betrothed, shall inherit; for she is separately mentioned by GO'TAMA.

CHANDE'SWARA.

MISRA, CHANDE'SWARA and CULLU'CABHATTA read the last measure in the text of VRĪHASPATI; "she receives a trifle as a mark of respect." (*labhatē māna matrācam*). Hence, from the concurrent import of the text of VRĪHASPATI, that of MENU likewise is thus expounded by CHANDE'SWARA; 'unmarried sisters only have equal shares with their brothers; but to married sisters some trifle must be given as a mark of respect, in proportion to the estate.' MISRA concurs in that opinion. But CULLU'CABHATTA says, out of the maternal estate, the fourth part of a share shall be given to married sisters, as a quarter of a share is allotted to unmarried sisters out of the paternal estate. JIMUTAVAHANA reads, "she shall not inherit the wealth of her mother" (*na labhen matrīcam dhanam*), and adds, on failure either of a son or of an unmarried daughter, the other inherits the whole, in default of both, the claim of married daughters, who have or may have sons, is equal.

WHAT proof is there, that a married daughter shall in this case inherit the separate estate of her mother, for sister, daughter, and other terms, in the texts of MENU and the rest, relate to unmarried daughters only? Lawyers thus reconcile the seeming difficulty, the word *issue* occurring in the text of DE'VALA, and a married daughter being issue of her mother, both she, who has, and she, who may have, a son, are entitled to inherit. Then a barren or widowed daughter should also succeed? They do not inherit, because they cannot confer a benefit on their mother, but she, who has, or may have, male issue, can confer a benefit by means of her son. So JIMUTAVAHANA.

BUT

BUT some lawyers hold, that, on failure of unmarried daughters, a married one shall have an equal share with a son, for no distinction in respect of daughters is mentioned in the texts of MENU, NA'KEDA, YA'JNYAWALKYA and VAS'ISHT'HA : but the text of VR'ĪHASPATI relates to the case where an unmarried daughter exists : and even on the text of GO'TAMA, as there is an order of succession to the paternal estate, so there is in the present instance ; but with this distinction, that a son and daughter jointly succeed. That opinion should be rejected, being unnoticed by esteemed authors.

SRI' CR'ISHNA TERCA'LANCA'RA and others hold, that unmarried daughters, whether verbally betrothed or not, shall at the same time take equal shares. Does it not appear from the separate mention of them in the text of GO'TAMA, that their title is successive ? To this we reply, since it is acknowledged, that *the succession of a daughter, who has been betrothed, is barred by the claim of one, who has not been affianced, both cannot have an equal right to inherit with their brother: one, who has an equal title with the preferable heir, cannot be reduced to an equal succession with one who would have been excluded by that heir ; for stronger and weaker claims cannot, in the same circumstances, be equal.* But, as a son, who would be debarred by the existence of his own father, has an equal claim to the patrimony, with his paternal uncle, who had an equal right with his father, so likewise, in the present instance, *a betrothed daughter, who would have been debarred by a daughter not betrothed, has an equal title with a son, who had an equal title with the daughter who was not betrothed.* As for the argument, that a son's son, whose own father is dead, confers benefits by the oblation of single and double sets of funeral cakes, but not while his own father is living ; this consequently, not the intervening right of his father, is the cause why he does not receive the heritage ; that is futile, for the great grandson, whose own father is dead, must necessarily be debarred by his paternal grandfather. Therefore, as it is not admitted, that

THE text of GO'TAMA relates to property received at the time of the nuptial ceremony. So

## CCCCXCI.

MENU, and the *Mahābhārata* :—THAT, which was given to her mother at the time of her marriage, shall become the share of the virgin daughter alone.

THE daughter not verbally betrothed, whom the legislator calls a virgin daughter, shall take the property which was given on the bridal procession of her mother. To the question, who succeeds in her default? the answer is, a daughter only betrothed, as ordained by GO'TAMA; but, on failure of her, the married daughter, who has, or may have, a son, as suggested by the text of VAS'ISHT'HA.

## CCCCXCII.

VAS'ISHT'HA :—THE paraphernalia of the mother, her female issue shall inherit in equal shares.

ON failure of such a married daughter, a son succeeds; in default of him, a barren or a widowed daughter, for they also are issue of the mother. Such is the opinion of JI'MU'TAVA'HANA.

THE opinion of CHANDE'SWARA should be here followed. But as for the explanation of the word *apratishṭhitā*\* proposed by MISRA and CHANDE'SWARA, (one, whose husband is indigent, and who is unfortunate,) it has been censured by JI'MU'TAVA'HANA and the rest, because there are no grounds direct nor argumentative for such an exposition. As for the word paraphernalia (*pārṇāyā*) in the text of VAS'ISHT'HA, which is expounded by MISRA and CHANDE'SWARA, 'female apparel, mirrors, bracelets and the like,' that explanation might be admitted, if it did not contradict the rule for expounding phrases of scripture and of law in a literal sense. but it is improper to interpret the words of scripture and of law in a secondary sense,

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\* Translated "betrothed only."

or by construction with remote terms, by repetition and the like ; for otherwise, words becoming *similar* to the milch cow which gratifies every wish, all words would be presented in all senses, and there would be no certainty of the meaning. The same remark should also be extended to other *parts of the sentence*, lest the term " woman " (*interpreted female issue*) be taken in various senses by an *implied* repetition, under the rule, *that the plural number is an abridged form of the single term thrice or oftener repeated*. Consequently, admitting no distinction of daughters unmarried or married, they *all* have an equal claim to the female apparel and the like. Thus some lawyers. But that is wrong ; for in the gloss on the text of YA'JNYAWALCYA, the same rule is applied to wealth given on her marriage, and to the paraphernalia of a married woman. Consequently this term has been expounded as signifying female apparel and the like, on the consideration that the word was so used by ancient authors.

\* THE right of the daughter, in preference to the son, is founded on the mention of daughters in the text of YA'JNYAWALCYA (DI). It should not be argued, that this word relates to unmarried daughters. To the question who shall inherit on failure of them, there would be no certain answer.

LIKE other separate property left by a married woman, a daughter inherits this also on failure of sons. It should not be argued, \* be the law as it may in other cases, still the son, as issue of the mother, has, in this instance, a right of inheritance on failure of a daughter, *not in preference to her*, for the term " her " or *their*, in the text of NA'REDA (CCCCLXI), intends the mother.\* Even in that case the difficulty is removed by referring the word daughter to the unmarried one, upon the coincidence of the text of MENU ; and the word " her or their " may intend the married daughter immediately presented *by the order of the sentence*. Connecting the word " daughter," which signifies female offspring of the mother, with " issue " signifying progeny, the sense exhibited is " issue of the daughter : " the supposed objection, that a person or thing cannot be *spoken of*, at the same time, *as effect* and *as cause*, is thus obviated. If the word " issue " implied son of the mother, the word " her " or " their," would be unmeaning ; for, without that term, the word mother is already presented in the phrase, " daughters share the wealth of their mother." It

It should not be objected, that the succession of the daughter in preference to the son is suggested by the text of YA'JNYAWALCYA (CCCCCLXXXVI); because, the word "her" or "their" not being found in that text, the meaning must be 'issue of the mother.' Since there is no argument to prove the restriction of that text to 'wealth received at the time of marriage,' it has been already expounded as relating to the estate of a married woman in general; and the word "issue" always requiring the reference to a parent, it should be joined in construction with the nearest term "daughter." It should not be objected, that, in answer to the question arising on this interpretation of the phrase "if there be no female offspring, then male issue," the mother is most naturally presented, being already placed in construction as the parent. Lest another text (DI) become a vain repetition, this precept must be explained as relating to other property of a woman, except that which she received at her marriage; it is therefore improper to affirm, that the son succeeds on failure of daughters, and the interpretation therefore is not simple. Consequently the terms ought only to be understood in this sense, "issue produced by them."

AGAIN; this text does not relate to wealth received at the time of marriage, it is therefore confirmed, that no proof exists of the right of a married daughter to inherit, in preference to a son, wealth received *by her mother* at the time of marriage. To this it is answered, the joint right of all daughters being deduced from the text of YA'JNYAWALCYA, because that attributes a right to daughters as such, the order of succession, propounded by MENU and GO'TAMA, is not ordained by YA'JNYAWALCYA; but the "word daughter" intends secondarily an unmarried one. Hence, all daughters first inherit successively; on failure of them, the son has a demonstrated title.

THE general right of daughters and sons to take equal shares being deduced from the text of MENU and from that of YA'JNYAWALCYA above cited, the order of succession is only suggested by the text of VRĪHASPATI: does it not follow therefore, that a son and a married daughter have an equal title to the estate of a woman, other than wealth received at her marriage? It should not be objected, that the equal participation of one who was debarred,  
with



with one by whom he was debarred, is contrary to common sense. It has been already stated, that this must be admitted in the case of wealth inherited from ancestors: in the instance of a title deduced from reasoning, argument, which justifies the equal claim of one, by whom another is debarred, cannot indeed justify the equal claim of one who was debarred by him; but in a case expressly ordained by law, it is otherwise. Thus, since reasoning is not in this case adduced to prove the equal title of the son and of the daughter, their equal claims must be affirmed to be solely deduced from express law: and, if the equal title of one who was debarred, and of one by whom he was debarred, have been propounded in express texts of law, then only can it be admitted.

To the question thus proposed, the answer is, no; for the exclusion of the married daughter, if there be a son and an unmarried daughter, is suggested in a portion of a text above cited (CCCCCLXXXVII as read by CHANDESWARA), and it has been already established by investigation, that a married daughter inherits only on failure of both, since there is no ground for selection.

#### CCCCXCIII.

CA'TYA'YANA :—ON failure of daughters, that estate of a married woman shall descend to her son; but, in default of her parents and brothers, what she received from her kinsmen, devolves on her husband;

2. Married sisters shall share with kinsmen: this law, concerning the separate property of a woman, is ordained in the case of partition.

## CCCCXCIV.

VISHNU after premising "forms of marriage:"—IN all forms of the *nuptial* ceremony, the estate of women, who leave issue, descends to their daughters.

## CCCCXCV.

MENU:—IF a widow, *whose husband had other wives of different classes*, shall have received wealth at any time as a gift from her father, and shall die without issue, it shall go to the daughter of the *Bráhmání* wife, or to the issue of that daughter.

JÍMU'TAVA'HANA infers from the special mention of "wealth received from her father," that property given by her father, at any other time but that of the nuptial ceremony, shall go to the daughter: the word *Bráhmání* is a mere repetition. Consequently, since the term *Bráhmání* merely suggests lawful marriage, wealth, given by their fathers to women of any class, shall descend to their daughters, not to their sons while a daughter is living. Disapproving the *vain* repetition supposed in this interpretation, he subjoins another explanation; 'or, lest the word *Bráhmání* should become a *vain* repetition, the text may be explained as signifying, that the daughter of the *Bráhmání* wife shall take the wealth which the *Cshatriyá* or other wives, leaving no issue, had received from their fathers: the separate property of a woman, who leaves no issue, does not devolve on her husband. Thus, the whole text is well interpreted.' CHANDE'SWARA and CULLÚCABHATTA adopt this explanation. It should not be argued, that the text does not ordain the right of a daughter by another wife, but limits succession in favour of one born of a *Bráhmání* woman in lawful wedlock. The words "received from her father" would be unmeaning; and many phrases must be taken in a secondary sense, if texts, expressed in general terms, must be referred to a limited import, in consequence of a distinction taken in regard to daughters. As for the notion, that the text is intended to show the succession of the *Bráhmání* daughter to wealth given by a father or other kinsman on any other occasion but the nuptial ceremony; that also is not approved by authors; for there would be a disparity in the repetition of laws concerning

oblations. Why does not the son's son inherit in preference to the daughter? It should not be answered, he does not inherit, because there is no argument to establish the succession of a grandson distant by an interval, since the text of NA'REDA declares the right of the daughter immediately after that of the son (CCCCXIX). Since that text is inserted by JÍMU'TAVA'HANA under the title of succession to the estate of him who leaves no male issue, the word son must necessarily signify male issue by males as far as the great grandson.

To the last question proposed, the answer is, the succession of a daughter to the separate property of her mother is expressly ordained by law, not deduced from reasoning. Were it inferred from argument, she would have no right, if a son existed. Hence it is improper to contest her right which is suggested generally by her relation as daughter: it could only be resisted by the authority of a special text, if such there were. But other lawyers hold, that a daughter is heiress in the first place, solely because she sprang from the body of *the mother*; else, the right of the daughter would be subsequent even to that of a daughter's son. Neither has the daughter's son an equal claim with the son's son, nor yet a prior claim; for the son of a married daughter, who is *herself* debarred by a son, is excluded by the son of a son, by whom the daughter was debarred. But SRÍ CRÍSHNA TERCA'LANCA'RA, adopting this reasoning, affirms the prior title of a daughter's son to inherit wealth given at the nuptial ceremony. This therefore is the decision; on failure of sons, a daughter's son is, in the first place, heir to wealth given at the nuptials; in default of him, the son's son: but to property, which was not given at the marriage, the son's son is heir on failure of married daughters; and, in default of him, the daughter's son.

SOME lawyers ask, admitting the succession of a daughter under the authority of the text, although she confer no benefit on *her* parents, how can a daughter's son inherit?

CCCCXCVI.

SA'TA'TAPA:—AFTER the first annual obsequies by the *sapin-*  
das,

*das*, whatever is given at the monthly rites to ancestors by the son of the deceased, his mother has a share of the benefit: this is a settled rule in all systems of religious and civil duties.

If it be argued from this text of law cited by RA'GHUNANDANA, that a daughter's son also confers benefits on his maternal grandmother, because she has a share of the funeral cake offered to his maternal grandfather, since the word "ancestors" (literally fathers) intends three paternal, and three maternal forefathers, namely the father and the rest, and the maternal grandfather and so forth; and the word "mother" intends three female ancestors ascending from the mother, and three other female ancestors ascending from the maternal grandmother; *these lawyers reply*, the word "ancestors" intending three persons ascending from the father, there are grounds for taking the word "mother" in the large sense of mother, paternal grandmother, and paternal great grandmother, namely the coincidence of the text formerly cited (CCCCXXXII) and of the following precept.

#### CCCCXCVII.

At obsequies on the day following the eighth lunar day in certain months,\* at those with a triple set of oblations, at *Gayá*, and at the anniversary obsequies, the son should separately perform a *śrāddha* to his mother; in other cases he should perform obsequies to her with her lord.

For it is there shown, that in other instances the *śrāddha* should be performed to those women with their lords, for whom it is separately performed, by the followers of the *Tajurvāda*, at the obsequies mentioned. But if this be taken as an indirect authority for considering the word "mother" as bearing the secondary sense of maternal grandmother, then she is in truth benefited by her daughter's son: yet SRÍ CRĪSHNA TERCA'LANCA'RA objects to this, the remark of A'CHA'RYA CHU'D'A'MANÍ, that the son of an uterine sister, and the son of a sister by a different mother,

\* *Asvini*, *Āshlāshā*; on the ninth lunar days of *Puṣya*, *Mṛga*, and *P'halgunā*; and with some, in *Jyāishā* also.

have an equal title to the estate of him who leaves no male issue *nor rear b ir*. They could not, say some lawyers, have an equal right of succession, if the maternal grandmother could be benefited by her daughter's son. That is futile, for the succession of the daughter's son is deduced from a text of VP̣IHASPATI which will be cited, and he has, as issue of his grandmother, a legal right of succession, under the text of MENU (XLII), before her husband there mentioned, but after her son's son, and the texts of NA'REDA and YA'JNYAWALCYA (CCCC LXI and CCCC LXXXVI) *suggest his succession*.

ADMITTING the succession of a daughter's son, but after the great grandson in the male line, should he not also succeed to wealth given at the nuptials, after both the grandson and the great grandson in the male line, *not before either of them?* No, the right of the daughter's son being ordained by texts of law, the further order of succession is established by reasoning: and that reasoning is here founded on proximity, and on the similar mutual exclusion of the remoter offspring of those, who debar, and are debarred by, each other. Then the son's son is not heir, because he is not mentioned in the text, and surely the son of that grandson *has no claim?* The right of the daughter's son being barred, this suggests the right of the son's son to wealth, other than that which had been given at the nuptials, but a son's son, and the son of that grandson shall succeed before the husband to wealth given at the marriage, because they are issue of the woman. If the great grandson in the male line inherit in right only of his being issue of the woman, may not his son or remoter descendant also inherit? Both lineal descent and benefits conferred are causes of inheriting the separate property of a woman, for the word "him" is not limited to the masculine gender, in the text of MENU, "even the son of a daughter delivers him in the next world, like the son of his son," and that text must be considered as relating to the son of an appointed daughter, but not restrictively, that the verse of the *Mahabharata* (CV) may coincide with it. Since the rights of a son's son are attributed to a daughter's son, the son of a daughter inherits after the son of a son, but he is first heir to the wealth given at nuptials, because, say lawyers, his mother is in this instance chiefly considered.

THE daughter of a daughter is not heiress with the son of a daughter, nor after him, nor before him; for no law ordains her succession. As for the subjoined text of MENU, it shows that some trifle shall be given as a mark of respect by the son and by the daughter, not that a share shall be received by the daughter of a daughter; for the text expresses "something," *that is, some trifle*; and the expression, "should be given," suggests the brother and sister as the givers, which would be improper if she had an equal right of inheritance with them.

### CCCCXCVIII.

MENU:—EVEN to the daughters of those daughters, it is fit, that something should be given, from the assets of their maternal grandmother, in proportion to the allotments, on the score of natural affection.

"IN proportion to the allotments;" in proportion to the great or small amount of the assets. The Retnācara.

BUT VA'CHESPA'TI BHATTACHA'RYA says, something must be given to the daughter's daughter, whose own mother is dead; and that must be given by a married daughter, not by a son, nor by an unmarried daughter; but, if the wealth were received at the nuptials, *something must be allowed even by a son*: and that something, which is given, shall be proportionate to the share of her mother, as the son's son, whose own father is dead, receives a share of the property left by his paternal grandfather. It is proper therefore to refer the word "those" to the persons who make the partition.

THE comprehension of the married daughter in the text preceding this (CCCCCLXXXV) is not universally admitted; for the unmarried daughter may be intended by the word "sister." The succession to the separate property of a woman does not, like the inheritance of an estate left by a man, extend to the third in descent: this objection to that commentary should also be examined.

VA'CHESPA'TI MISRA likewise affirms, that, on failure of daughters, the son

and the daughter of a daughter inherit under the text of MENU. To this again it may be objected, say *some* lawyers, that, according to MISRA and CHANDE'SWARA, the son of a daughter succeeds, on failure of daughters, to the wealth given at nuptials, although a son exist, under the texts of NA'REDA and YA'JNYAWALCYA above cited.\* That is questionable; for the full import of the text of YA'JNYAWALCYA relates to other sorts of property, except wealth given at nuptials, since another precept of YA'JNYAWALCYA (CCCCLXXXVI) would be a vain repetition, if this text related to wealth given at nuptials: the precept of NA'REDA also may bear the same import; for the word "sons," in his text (CCCCLXI), may be brought *from the first bemislich into the last*; in both instances, it is more proper to carry forward the word *sons into the second bemislich*, than to attribute the limited sense of wealth received at nuptials to the words "estate" and "assets," which denote property in general, and which are already carried forward *into the last bemislich of each text*; and the son of a daughter is inferior in comparison with the woman's own son.

Ji'MU'TAVA'HANA, RAGHUNANDANA and the rest affirm the right of the son to inherit wealth given at nuptials, in preference to the daughter's son. On failure of both grandsons, RAGHUNANDANA holds, that the great grandson in the male line *shall not rit*. Ji'MU'TAVA'HANA admits the right of a great grandson in the male line. But that reading in the treatise of RAGHUNANDANA, authors consider as an error of the transcriber. This is not elegant; for it is wrong to suppose, that Ji'MU'TAVA'HANA, who asserts the succession of a daughter in right of the funeral cake offered by her son at the double set of oblations, should not admit the succession of a grandson in the male line, who does himself offer the funeral cake. Accordingly SRI CRISHNA TERCA'LANCA'RA, author of a commentary on his treatise, says, 'on failure of heirs as far as the daughter's son, succession, extended to the great grandson in the male line, is suggested indirectly.' The right of a great grandson by males, on failure of grandsons in either line, is therefore demonstrated. In default of him, barren or widowed daughters succeed; for they also are issue *of the woman*. So RAGHUNANDANA and Ji'MU'TAVA'HANA.

BUT others hold, that these *female heirs* succeed merely as daughters; they were before debarred by persons, who confer benefits on *the female ancestors*, but have now gained the opportunity of *asserting their claim*. Is not this inaccurate, since the son of a daughter confers no benefit on *his maternal grandmother*? If it be said, benefiting her husband and the rest, he mediately confers benefits on *her*; it is answered, a married daughter would in that case succeed in preference to the son's son. To the question thus proposed, the answer is, since a married daughter may confer benefits on the husband of her mother, by means of her son, she, who thus affords some advantage, being at the same time "daughter" and "issue of the body" of her mother, cannot be debarred by those, who confer greater benefits; for the advantages afforded are not principally considered in treating of separate property held by women. But barren and widowed daughters, conferring not the least benefit, ought to inherit after the great grandson in the male line, but before the husband, because they are daughters and sprang from the body of their mother. Then should not these two inherit before the grandsons of a son whether in the male or female line of descent from him? It may be answered, what should prevent their succession to this property any more than to the estate of one who leaves no male issue?

BUT others again affirm, since there is no proof, that the funeral cake offered at the double set of oblations shall be chiefly considered in the succession to separate property held by women, therefore the barren and widowed daughters, who offer the anniversary cake, may inherit before a daughter's son.

WHY do not a son, a son's son, and the son of a grandson jointly inherit the estate of a married woman, as they do the property left by a man? It should not be answered, they inherit jointly on the sole authority of a text of CATYAYANA, which relates to the subject of succession to the property of a man (LXXIX), but it is not so in the present instance, because there is no such text. Although that might be alleged on the opinion of CHANDESWARA and others, it cannot be affirmed conformably with that of JIYU TAVANA and the rest, for texts, relative to the inheritance of property left by men (CCCCXCVIII &c), may be adduced under the title of succession



to the separate property of women. It should not be said, that is admissible; the son's son, whose own father is dead, may claim the estate of his paternal grandmother, as *he may* the property of his paternal grandfather; and thus, the remark of JÍMU'TAVA'HANA, "a son's son inherits on failure of daughters," is intended to exclude a son's son, whose own father is living. In saying "a son's son shall inherit on failure of daughters," what is the import of that term? If one, whose father is living, be meant, terms denoting the failure of daughters are superfluous; for a married daughter has no present claim, since the father of that grandson has the sole right of inheritance: if one, whose father is dead, be meant, why is the failure of daughters required, since he shares equally with an unmarried daughter? Thus neither would be apposite.

To this some reply, JÍMU'TAVA'HANA does not deduce the rule of succession to the estate of a woman, from a text relative to the inheritance of property left by a man; but on some occasions he cites a text concerning this subject, in a form of illustration, to confirm *the rule otherwise deduced*: thus, the same reasoning not being equally applicable to the property of a man and to that of a woman, it is improper to deduce rules concerning the estate of a woman, from texts relative to property left by a man.

WEALTH given at the time of marriage (*yautuca*) has been mentioned; what is meant by that term? Know, that it signifies any thing received at the time of marriage. From the verb *yu mix*, is derived *yuta*, by adding the neuter suffix of abstraction; it therefore presents the sense of mixture: now, under the authority of the *Vêda*, an union of bride and bridegroom takes place at the time of marriage; what is then received is called *yautaca*; reading the word, as JÍMU'TAVA'HANA does, without the *u*: but a various reading with the letter *u* occurs in some instances; and that is regularly derived from *yutu*, which again is regularly deduced from the crude verb *yu*, by subjoining the suffix *tu*.

THE forms of the nuptial ceremony are eight, distinguishing the marriages called *Brábma*, *Darva*, *Arśa*, *Prájápatya*, *Aśura*, *Gándharva*, *Ráçśasa*, and *Paiśacha*: these are described by YAJNYAWALKYA.

YA'JNYAWALCYA:—IN the *Bráhma* nuptials the damsel is given by her father, when he has decked her as elegantly as he can, to the bridegroom, whom he has invited; in the *Dava*, to the priest employed in performing the sacrifice; in the *Arsha*, to the bridegroom, from whom he receives, for religious purposes, a bull and a cow;

2. When the father gives her to a suitor, saying, "perform all duties together," the marriage is named *Cáya* (or *Prájápatya*); and a son produced by it confers purity on himself and on six descendants in a male line: \*
3. An *Afura* marriage is contracted by receiving property from the bridegroom; a *Gándharva*, by reciprocal amorous agreement; a *Rácshasa*, by seizure in war; a *Paisácha*, by deceiving the damsel.
4. THE four first are approved in the case of a priest; the *Gándharva* and *Rácshasa* marriages are permitted for a soldier; the *Afura* ceremony is peculiar to mercantile and servile men; the *Paisácha* marriage is reprobated for all.

THEY are called *Bráhma* and so forth to intimate praise or blame. 'This first ceremony is proper for *Bráhmanas* and the rest, and therefore called *Bráhma*;' such is the meaning suggested by the legislator.

WHEN a damsel, decked with ornaments, is given by her father to the bridegroom, whom he has invited to his own house, it is a *Bráhma* marriage, or ceremony of *Bráhmanas*, the first form of the nuptial rites; that marriage, in which the damsel is given to the family priest attending a sacrifice, at the time when the sacrificial fee should be given, is termed *Dava* or the ceremony of *Dávas*, the second form; the gift of a damsel after having received from the bridegroom one pair of kine, or with the delivery of one pair of such cattle,

\* I complete the citation, which is imperfect in the original

si named *Arśhā*, or the ceremony of *Rīshis*, the third form; when a damsel is given to any person asking her in marriage, with these words pronounced by the giver, "Perform all duties together with her," it is denominated *Prájápatya* or the ceremony of *Prajápatis*; another name for it is *Cáya* derived from *Ca* which signifies *Prájapati*, according to dictionaries; this is the fourth form: the gift of a daughter to a bridegroom, taking from him wealth other than a pair of kine, *marily* at his own choice, without any authority of law, is named *ʼAśura*, or ceremony of *Aśuras*, the fifth form; when there is reciprocal connexion with mutual desire, the marriage is called *Gándharva*, or ceremony of *Gandharvas*, the sixth form; the seizure of a maiden after overcoming her father in battle, or the abduction of her by force from her house, is denominated *Rácsāsa* or ceremony of *Racshasas*, the seventh form; the seizure of a damsel by fraud, while sleeping or intoxicated, is termed *Paiśācha* or ceremony of *Pisāchas*, the eighth form of nuptial rites. Of these modes, four, the *Bráhma*, *Daiva*, *ʼArśha* and *Prájápatya* are legal for a *Bráhma*; the marriage stiled *Gándharva*, and the seizure of a maiden in war, are peculiar to the *Cshatriya*; the *ʼAśura* marriage is permitted for a *Vaiśya* and a *ʼSúdra*; the *Paiśācha*, forbidden to them, should be practised by no person whomsoever. Such is the exposition approved by *ʼSU'LAFA'NI*.

At present the *Bráhma* nuptials only are practised by good men; but even the marriages called *ʼAśura*, *Gándharva*, *Rácsāsa* and the rest, are sometimes practised by others.

"MARRIAGE" is a rite to be performed by the bridegroom, and which completes the regenerating ceremonies, since the act of receiving the bride effects it, the term has been also used in this gloss as signifying the gift of a maiden. The nuptial rites are necessary even in the marriage named *Gándharva* and the rest.

#### D.

DE VALA.—NUPTIAL rites are ordained in the marriage stiled *Gándharva* and the rest; to this contract the nuptial fire must be made witness by men of the three classes.

THE second marriage of a woman who had been already espoused by another man, is called by ATHARVAN a regenerating ceremony. this marriage also falls under the description of *Gardbaria* rites

WEALTH, received at the time of marriage in any one of such eight forms, is denominated *Tautuca* On this MISRA remarks, that wealth, received at the time of marriage in the form called *Brabria* and the rest, goes to the daughters.

## A R T I C L E II.

ON SUCCESSION TO THE SEPARATE PROPERTY OF A WOMAN LEAVING NO ISSUE.

## DI.

YAJNYAWALKYA:—A MARRIED woman dying without issue, her property, received at *Bráhma* nuptials, or even in other four unblamable forms of marriage, it goes to her husband; if she leave issue, it descends to her daughters; but in other forms of the nuptial ceremony, her property then received goes to her father *and mother*.

HERE "four," taken *inclusively*, is not intended to except a fifth ; hence, in the marriages called *Bráhma*, *Daiva*, *Arsha*, *Gándharva* and *Prájápatya*, the wealth of a married woman, who leaves no issue, goes, on her death, to her husband ; in other forms of marriage, namely the *Racshasa*, *Asura*, and *Paisacha* nuptials, it goes to her father. This relates to wealth received by a woman at the time of her marriage.

The *Retndcara*.

"IT is not intended to except a fifth ;" consequently wealth, received at four of the nuptial ceremonies, necessarily goes to the husband : but, in the form of marriage which is different from those four, it devolves, in some instances, on the husband ; in others, on another heir. In like manner, under the precept, "received at other marriages, it goes to their parents," the wealth of married women, received at certain other marriages, devolves on their parents, but not what has been obtained at nuptials different from those others ; which implies an exception of other persons in those other forms of marriage.

IN the marriage called *Racshasa* and the rest, if the father, or other kinsman of the maiden, though at that time defeated in battle (for such is the described form of this marriage), yet following the practice of the *Daiva* ceremony, or of marriage in general, give a nuptial portion to his daughter, through natural affection or from other motives, then this rule is applicable to that case.

and in the text immediately preceding (DII), the same construction should be followed by fetching the word "given" from the subsequent verse. Such is the opinion of JĪMU'TAVA'HANA and the rest.

### DV.

YAMA:—WEALTH, which is given on the marriage called *Āsura*, or on either of the *two* others, goes to the parents of the woman.

RAGHUNANDANA specifies the time of marriage; 'the period of the nuptials is the space from the beginning to the close of the nuptial ceremony; it commences with the oblation for increase of prosperity, and ends with a return of the salutation:' it is so expressed in the *Vivāha tatva*. Here the implied meaning is, from the first to the last member of the ceremony: hence, if the oblation for increase of prosperity, or any other part of the rites be not performed, there is no objection.

BUT others say, "marriage," in the text above cited (DV), is expressed in the seventh case with a general or illustrative meaning; as in the phrase, "he goes a begging." Consequently, whatever is given to a damsel on account of her nuptials, is wealth given on her marriage (*yaśataḥ*); such is the obvious sense; and that alone should be received by her husband at a subsequent time. Accordingly wealth given on the day of marriage, before the oblation for increase of prosperity, is a present given on her nuptials. Does it not follow, that wealth, which a kinsman, returning from a distant country, but unable to attend on the day of the ceremony, gives when four or even five days are elapsed since the nuptials, would be a present given on her marriage; but wealth previously demanded, being delivered, on the very day of marriage, by a kinsman casually uninformed of it, after the oblation for increase of prosperity, would not be wealth given on her marriage; and her husband would have no right to it *after her demise*? This is admissible; for the expression of CHANDĒ'SWARA, "received at the time of marriage," may be taken in a lax sense as signifying a present given, by reason of her nuptials, on any other day whatsoever.

IF a woman, having no issue *male or female* including daughter's sons, leave a husband who has a son by another wife, which of them shall inherit her estate? RAGHUNANDANA replies the son by another wife is first heir, on failure of him, the son of such a son, in default of him again, the husband and the rest. The reason is, that her husband and others do not offer a funeral cake, in which the late proprietress can participate that is also noticed by the commentator, ' the son of another wife, and the son of such a son, have both an equal claim, because *others* do not offer, in the double set of oblations, a funeral cake which the proprietress may share '

THE superiour claim of the husband and the rest in competition with his son by another wife, is thus denied, because they do not offer, in the double set of oblations, a funeral cake, which the proprietress may share, it is not thereby shown, that the son of another wife has a superiour claim and thus other reasoning must be brought for the succession of a son by another wife in preference to the surviving husband such, for example, as the following, since the son of any one wife is figuratively called, in a text of MENU, son of all the wives *of the same husband*, his son should also be figuratively termed grandson of all the wives

## DVI

MENU —Thus if, among all the wives of the same husband, one bring forth a male child, MENU has declared them all, by means of that son, to be mothers of male issue.

IT should not be objected, that, were it so, a brother's son would alone inherit the property left by a man, although a daughter or her issue, and brothers and the rest, were living, because a nephew is figuratively called son of all the brethren in a text of MENU (CCLXXVI). It would be irregular to deduce the order of succession from reasoning, whilst another order of succession expressly ordained by law, is found in the text of YAJÑAWALKYA (CCCXCVIII), but, in this case, no other series of claims having been expressly ordained to bar that, which is deduced from reasoning this order of succession, consistent with the reason of the law, should be affirmed.



## DVII.

BAUDHA'YANA.\*—OF an unmarried woman deceased, the brothers of the whole blood shall take the inheritance; on failure of them, it shall go to the mother; or, if she be not living, to the father.

\* THAT again, which has been received by a woman after marriage, from the family of her father, mother, or husband, shall go to her brothers, as ordained by the following text.

## DVIII.

YA'JNYAWALCYA —If a married woman die without issue, her nearest paternal or maternal kinsmen inherit whatever her own family had given her, the perquisites allowed by her husband, and whatever she received after marriage.

“ WHATEVER her own family had given her,” what was bestowed on her by her father and mother their sons, *meaning* her brothers, are the nearest kinsmen, paternal or maternal, who shall inherit as ordained by CA'TYA-YANA.

, JIMU'TAVA'HANA.

## DIX

Vridha CA'TYAYANA: — WHATEVER immoveable, and of course whatever moveable, nuptial property has been given by parents to their daughter, shall always go to her brother, if she die without issue.

“ WHATEVER she received after marriage” from the family of her father, mother, or husband, is called a gift subsequent. In like manner, the expression “ whatever her own family had given her,” may suggest any thing bestowed on her by her parents before marriage, however, it does not comprehend that, which her brother gave her, or which she herself acquired, before marriage an heir being therefore sought for such property, her brother should be con-

\* The text is, in other compilations, attributed to NARADA.

sidered as having the sole right. Since it is mentioned in the same place, JĪMU'TAVA'HANA and the rest must of course admit the right of her brother, on failure of her husband, to inherit wealth acquired by a woman during co-verture. Brothers alone shall take the perquisites, both those which are defined by VYA'SA, and those which are explained by CA'TYA'YANA. So JĪMU'TAVA'HANA and RAGHUNANDANA; ŚU'LAPA'NI also holds the same opinion. But CHANDR'SWARA says, the perquisite, which was received when the damsel was given in marriage, is here determinately meant. He therefore considers the text of SANC'HA as relating to the case where the maiden dies immediately after receiving the nuptial present.

## DX.

SANC'HA, after premising "may take back :"—The lover *may take back* his nuptial present on the death of his betrothed mistress.

JĪMU'TAVA'HANA does not concur in that opinion; for such a perquisite or nuptial present, being taken by her father, does not become the property of the woman. If it be said, this text relates to that wealth only, which is given exclusively to the maiden as a nuptial present on the bridal procession; the answer is, there is no authority for such an induction; and it would be difficult to find an heir for the perquisites mentioned by VYA'SA and by CA'TYA'YANA. Again; it is suggested by the expression, "what was received when the damsel was given in marriage," that he, who gives away the damsel, takes that present.

## DXI.

GO'TAMA :—FIRST the whole brothers take the perquisite of their sister; after them (some say, before them), the mother.\*

THIS last is the opinion of other legislators: thus ĪLA'YUDHA. The

\* This text is attributed to CA'TYA'YANA by the compilers of the *Viśvadharmasūtra*, and the word father is interpolated by them: with that difference only, they interpret the text as I do, in conformity with the gloss of JĪMU'TAVA'HANA.

meaning is, after the mother, that is, after her death. If the mother and father be living, it goes to those two. So the *Dīpacalīcā*.

SOME lawyers thus interpret the text; the whole brothers take the heritage of their sister on failure of the mother and father (so *ne* legislators say, before them): that relates to other property except perquisites, and this term bears a general sense: the heritage of a maiden goes to her parents on failure of whole brothers; the estate of a married woman goes to her whole brother on failure of her parents; for the sake of this double case, it is added "some *legislators* say."

BUT JI'MU'TAVA'HANA explains the text, after whole brothers, it goes to the mother; for that coincides with the text of BAUDHA'YANA (DVII): "some say, before them;" that is an opinion of other *legislators*.

CONSEQUENTLY the several property of a sister, received at any other time but her marriage, goes to her brother; such is his opinion. But, according to this interpretation, "unmarried women," in the text of BAUDHA'YANA, is unmeaning; and the other opinion, cited by GO'TAMA, is most inadmissible and improper. In a gloss on the text of BAUDHA'YANA, the word damsel is supposed, in the *Retnācara*, to signify unmarried woman. But VIJNYA'NE'SWARA, in his gloss on the text of YA'JNYAWALCYA, expounds "kinsmen," her husband and the rest; a distinction, *be adds*, will be noticed from other texts: consequently her estate goes to her kinsmen on failure of issue; and in that case, wealth received at *Brāhma* nuptials and the rest goes to her husband; but, in other forms of marriage, it devolves on her parents.

THUS the heir of the several sorts of property held by a woman, who leaves no issue, is determined; on failure of her father and mother, and of her brother, all her property goes to her husband, under the text of CA'TYA'YANA.

JI'MU'TAVA'HANA.

DXII.

CA'TYA'YANA:—ON failure of her parents and brothers, what

4 L

she

husband inherits, on failure of brothers, that wealth to which brothers have a demonstrated title (DXII), so a brother inherits, on failure of the husband, wealth to which husbands have a demonstrated title. Consequently, texts, showing the succession of husbands and the rest, are adverse to the claims of others while they are actually living, but do not contradict the succession of others in order, upon failure of them: and thus, it must be affirmed by RAGHUNANDANA, that, in default of her husband, a brother alone inherits wealth given to a woman by her husband, although the son of her sister in law be living. This is actually confessed by JĪMU'TAVA'HANA. Hence the text above cited (DIX) relates to wealth given by her father and the rest; and indirectly to property given by her husband, if she survive him; and to wealth received at the time of her marriage, if she die after her husband.

ON failure of the husband and the rest, *the following text is adduced.*

### DXIII.

VRĪHASPATI:—The sister of a mother, the wife of a maternal, or of a paternal, uncle, the sister of a father, the mother of a wife, and the wife of an elder brother, are declared equal to a mother.

2. IF they leave no issue of their body, nor the son of another wife of the husband, nor the son of a daughter, nor the son's son of another wife, the sons of their sisters and so forth shall therefore inherit their property.

“ISSUE of their body;” son, daughter and the rest, before mentioned. “Son;” the offspring of another wife of the husband. “Son of a daughter;” the daughters's son of another wife, who is the subject of a text above cited (CCCXCV). “Nor the son of him;” the son of another wife's son: but the daughter's son of another wife of the husband is debarred from succession, because he confers no benefits. Consequently the son and son's son of another wife inherit before the sister's son and other six heirs; and the daughter's son inherits before the husband, as his own daughter's son, and as  
offspring

offspring of a *Brāhmāṇa* daughter; but after him, according to JI'MU'TA-VĀ'HANA and the rest, as abovementioned.

BUT others thus interpret the text; a son begotten in lawful wedlock, a daughter's son (and of course a daughter); his son, that is, the son of a son, or grandson in the male line; and the husband and other heirs ordained by express texts, who are here understood from the connexion of the particle "nor;" on failure of all these, we say, a sister's son and the rest shall inherit in the order which will be mentioned, although the brother, the husband's father and the rest, and the son of another wife of the husband and other claimants be living. Neither is the term "begotten in lawful wedlock" superfluous as an epithet of son; for the son of another wife, and others, who are figuratively called sons, must be excepted. Nor should it be objected as a fault, that "son," to which the epithet is referred, becomes superfluous. That form of expression occurs in other texts (*for example*, "A son begotten in lawful wedlock, and one begotten on the wife by a kinsman, both share the father's wealth"), and it excludes a remoter descendant of the body. Nor is it inconsistent with common sense, that the son in law should inherit, although the son of another wife of the husband be living; for it must be borne, like the succession of a son in law, although the brother, or the husband's father, be living. As the husband of a daughter is by VRĪHASPATI figuratively called son, so is the son of another wife metaphorically called so by MENU. The younger brothers of a husband, and the rest, as well as the son of another wife, being considered as sons, who shall first inherit? On this question, if it be said, the son of another wife ought to inherit first, in right of superiour benefits conferred by him, because he gives three principal funeral cakes which should be offered by the son of a proprietor; the answer is, that is admissible; but he cannot claim succession before the husband, since he derives his title through him. It should not be objected, that the husband's brother and the rest, deriving their title through the father of the husband, would not inherit while the father in law is living. The succession of the husband's father and the rest is not deduced from any other text. Nor should it be argued, that he would have a prior title of inheritance, because he has a right to perform the obsequies before the husband. Such a maxim has been obviated, since the title of a sister's son

son and the rest to take the heritage has been propounded, even though the father in law, or other person qualified as a *sapinda* to perform the obsequies, be living. The husband's brother and the rest, as well as his son by another wife, being equally considered as sons, there is no authority to prove, that one should inherit before the husband, the rest after him. Nor should it be argued, that, the son of another wife being figuratively called son, when treating of those who are secondarily so called, it is therefore acknowledged, that he redeems *his stepbrother* from the hell named *put*, not *so* these sons of a sister, and the rest, who are figuratively called sons, merely that they may take the heritage: and thus they are not equal to a son of another wife. The husband confers many more benefits than he. As for the remark, that her own son is superiour to all others, solely because he delivers her from the hell called *put*, that is futile; for, were it so, her own son and the child of another wife would have equal claims *to her inheritance*. If it be said, her son has precedence, because he performs both offices of redeeming *her father and husband* from the hell called *put*, and thereby benefits the family of her own father and that of her husband, the answer is, since the son of her sister married to the same husband with herself also performs both offices, he would have an equal claim with her own son, and would have precedence above the issue of any other wife of the husband. and if her own son be acknowledged superiour to both those, who discharge the debt of offering a funeral cake to be shared by her in the double set of oblations, it cannot be affirmed, that his title is superiour solely because he delivers from the hell called *put*. Again, whatever claim the son of another wife may have, it is certainly true, that no argument exists to prove that the grandson of another wife inherits before the husband. These authors so expound the law.

WE resume the subject. Have the sons of sisters and the rest a coordinate title, or a successive one? Not the first, for association should not be assumed, if successive order be possible, and the sons of a sister, and others, of whom the designations are incompatible, ought not to be associated. They should therefore succeed in order as enumerated. Accordingly the son of a sister may be the first heir. It should not be objected, that the reason of the law prevents this, because the succession of a son in law, while a brother

of the husband exists, is contrary to rule. Since a son in law may regularly succeed, although an elder *brother of the husband* be living, he may also regularly succeed in preference to a younger *brother of the husband*: but, if the text be reversed, the order of succession stated therein must also be respected. Some authors so expound the law. But that is wrong; for it is improper, that one, who confers less benefits, should inherit, while another, who confers greater benefits, other than that which is afforded to the woman herself by means of obsequies, is living.

SINCE her husband's elder brother performs obsequies as a *sapinda*, and the younger brother of the husband confers equal benefits, a son in law and the rest would not inherit while either of these exist: this should not be affirmed. The younger brother of a husband also presenting the funeral cake as a *sapinda*, he is again mentioned as a son *by fiction of law*, to show that his oblation of the funeral cake is indispensable: and thus it follows, that the husband of a daughter, and others, mentioned in a single text as heirs of a mother in law, who leaves no issue, and so forth, must necessarily offer the funeral cake. Consequently the necessity of conferring benefits on the woman herself is the sole cause why a son in law and the rest rank above the elder brother of a husband. It is therefore demonstrably just, that a son in law and the rest should inherit, although the elder brother of the husband, and other heirs, be living.

BUT others hold, that a son in law does not inherit, if the elder brother of the husband be living; for he is not a kinsman connected by the funeral cake: but *he inherits* on failure of the husband and other heirs who are expressly ordained by law, the succession of those, who confer benefits, being deduced from reasoning. Among *sapindas*, the younger brother of the husband has the first claim; next the sons of her husband's elder and younger brothers; on failure of them, the son of the husband's sister; after him, in default of kinsmen within the degree of *sapinda* or of *sumānūdāca*, including fourteen persons ascending and descending, the right of her father's kinsmen being *in that case* celebrated, the sons of her brother or sister inherit; next, on failure of kindred in the father's or mother's families, the husband of a daughter; and lastly, the highest of twice-born men.

THAT is denied ; for, in the line of *śapindas*, there is no proof, that the husband's younger brother shall inherit first, although his father, who is nearer of kin, be living ; nor, in the line of her father's kindred, that the sons of her brother or of her sister shall first inherit. If it be said, they are preferable heirs because they are her sons *by fiction of law* ; it must be remembered, that all sons, *secondarily so called*, take the heritage immediately after a true son. Hence the method, approved by JI'MU'TAVA'HANA, should be followed. It may be thus stated ; the order of succession corresponds with the degree of benefit conferred : first the husband's younger brother inherits, because he offers a funeral cake to her and to her husband, and presents oblations to three persons, to whom cakes were to be offered by her husband, and to two persons, to whom they would have been offered by her son. After him, the sons of her husband's younger and elder brothers inherit together ; because they offer the funeral cake to her and to her husband, to two persons, to whom oblations would have been presented by her son, and to two persons, to whom funeral cakes were to be offered by her husband. On failure of those, the son of her sister *inherits*, because he offers the funeral cake to her, and to three persons, the maternal grandfather and the rest, to whom oblations would have been presented by her son. After him, the son of her husband's sister succeeds, because he offers the funeral cake to her, and to three persons, her father in law and the rest, to whom oblations were to be presented by her husband. Since the husband has a weaker claim than the son, it must be inferred, that he, who performs rites incumbent on her husband, has a weaker claim, than he who fulfils duties incumbent on her son ; this order of succession is therefore right. So JI'MU'TAVA'HANA and RAGHUNANDANA.

BUT the son of her husband's sister also performs rites incumbent on her son, for he performs the *śrādd'ha* for the paternal grandfather and other ancestors of her son, and of his father. Yet the son of her husband's sister, performing rites incumbent on both, has not a stronger claim than he, who merely performs those which were incumbent on her son. It should not be answered, that, according to RAGHUNANDANA, her sister's son has a stronger claim than the son of her husband's sister, because he satisfies six ancestors of her son including the maternal grandmother and the rest, while the other satisfies four ancestors of her son, the paternal grandfather and grandmother and the rest.



rest. The son of her husband's sister is superiour, because he satisfies six ancestors of her husband, namely his father and the rest, and his mother and so forth. Nor should it be argued *on the other hand*, that his claim is completely established in right of his satisfying those six persons. He, who contents four persons, who ought to be satisfied by her son, is inferior to him, who contents six persons, who ought to be satisfied by the same.\*

As for the observation, that a sister's son, performing rites incumbent on a brother, has a superiour claim, because a brother has a stronger title under a text above cited (CCCCXCIII 2), that is not apposite in the case of wealth received at the time of marriage in the form called *Brâhma* and so forth; for, in such instances, the husband has the stronger title.

SINCE the line of maternal ancestors is not chiefly considered, the son of the husband's sister, offering the funeral cake to the son's paternal ancestors, ought to be first heir under the rule, that, on the competition of chief and subordinate *claimants*, the office devolves on the chief person. Again, the son of the husband's sister also confers favours on the husband, who is one of two persons constituting one body. This also may be objected.

in-law's great grandson in the male line, because he is the nearest *śapinda*; after him, the paternal grandfather of her husband, or his issue; next the paternal great grandfather of her husband, or his offspring; and so forth, including fourteen persons ascending and descending; after these, her kindred on her father's side, as far as the tenth person; after them, the family of her mother; and lastly, the king *takes the estate*, except the property of a *Bráhmāṇi* woman. This brief exposition *may suffice*.

THE ground of this *order of succession* is the performance of obsequies; for it is shown, in the case of property left by a man, that heirs succeed in right of benefits conferred. On this subject

#### DXIV.

The *Viṣṇu purāṇa*:—A SON, a son's son, the son of a grandson, or like them a brother or his offspring, or a *śapinda* or his issue, become entitled, O king! to perform *funeral rites*:

2. On failure of all these, the offspring of a *śamánódaca*; or, *after them*, kinsmen on the mother's side connected by the funeral cake or by oblations of water.
3. BUT, if both families be extinct, the rites, O king! must be performed by women; or the obsequies for the deceased must be celebrated by intimate companions:
4. Let the king cause obsequies to be performed for him, who leaves no kinsmen nor wealth.

The same:—BY the *śapindas* and *śamánódacas* of the father and mother, by intimate companions, or by the king, who takes an escheat,

6. The first rites must be performed; but the last rites shall only be celebrated by sons and the rest.\*

\* The first funeral ceremony is the cremation of the corpse the middle rites consist in gathering the ashes and performing the obsequies for a person recently deceased these extend to the first annual *śrāda*. & *ba*. the last rites are the monthly, annual, and other obsequies for ancestors long since dead. T.

FIRST a brother, next his offspring : the apposition of the terms is in the sense of association ; ‘ a brother with his offspring :’ and the descendants of a brother perform obsequies according to *the degree* of proximity. Next a *śapinda*, namely a father and the rest, and their issue, including females, *that is*, the wife of a son and so forth. After them, the offspring of a *śamánódaca*, as mentioned in a text of law, “ the relation of the *śamánódacas*, or those connected by an equal oblation of water, ceases with the fourteenth person.” Next, *śapindas* and *śamánódacas* on the mother’s side. If both families, that of the father, and that of the mother, be extinct, obsequies shall be performed by women, meaning daughters of the family and the rest ; on failure of all these, by intimate companions, that is, by friends ; in default of them, by the king : *but*, since he cannot officiate in person, he must cause obsequies to be performed by the intervention of some man equal in class.

“ THE last rites,” subsequent to the first annual obsequies, that is, *other* annual *śráddhas* and so forth. In like manner, women also requiring obsequies, the right of performing for them ceremonies relative to another world should follow the same order. But in this case the terms, “ a brother or his offspring,” are not apposite ; for these are not *śapindas* of a *married woman* : the order must therefore be understood with the omission of them. On failure of kindred within the degree of a *śamánódaca*, the father and the rest, (meaning his kinsmen), *perform obsequies*, under the text *above cited* (DXIV 5). So RAGHUNANDANA ; but according to others, because reasoning shows the kindred of her father to be more venerable than those of her mother. On failure of them, the kindred of the mother, and the most exalted of twice born men, are qualified to perform obsequies for the deceased, under the text, “ on failure of them, the highest twice-born man.” They inherit the estate because they confer benefits.

ALTHOUGH women, included among these *remote heirs*, may perform funeral rites for the deceased, under the text of the *Viṣṇu purāṇa*, “ on the anniversary of decease, the last rites may be performed even by women ;” they do not share the property, for a text expresses, “ distribute not wealth among women, ignorant men, and such as neglect their duties.”

OTHERS hold, that the claim of a sister's son and the rest follows immediately after that of the woman's own issue, because they are declared equal to a son; their claim, as before, *is regulated* by the degree in which they perform rites incumbent on a son: else, there could be no certainty, when these persons, not mentioned in the *Vyṣṇu purāṇa*, would have a right to perform funeral rites.

RAGHUNANDANA affirms, that, on failure of heirs including kinsmen bearing the same family name, the father is first qualified to perform the funeral rites for a woman; on failure of him, her brother; next the son of her own sister, of her husband's sister, of her brother, and lastly the husband of her daughter, under the text of 'SA'TA'TAPA: *after these* the maternal uncle and the pupil of her husband claim that right; and last of all, other kindred of her father.

#### DXV.

'SA'TA'TAPA:—A MATERNAL uncle *shall perform the obsequies* of his sister's son; and a sister's son, the obsequies of his maternal uncle; *a son in law, the funeral rites* of his father-in-law; *a pupil, those* of his spiritual teacher; *a grandson, the obsequies* of his maternal grandfather.

2. THE funeral cake must be offered to their wives and sisters, to their mothers and fathers; this is a rule settled by lawgivers versed in holy writ.

ACCORDING to his opinion, a similar order should be understood in succession to property. Such is the inheritance of separate wealth left by a married woman: however, land, given by her husband, does not devolve on the heirs of her separate property, but on those of her husband's, under the text above cited (CCCCCLXXVII 2); for this follows of course, since the precept would be unmeaning, were the heirs of the woman intended: the legal heirs of her husband must therefore be understood. This text is expounded by authors as relating to an estate devolving on a wife by failure of male issue. Wealth, possessed as property in right of relation

given by her husband, and in regard to other sorts of property held by a woman as owner thereof. In answer to the question, what is the rule respecting immoveables given by her husband, and other sorts of property possessed by her? this text is cited; and the gift or heritage (*dāya*) of her husband there signifies his wealth, that is, the property of the wife formerly belonging to him. It follows from the epithet "*received from her husband*," that she has independent power over wealth devolving on her from her father and the rest by failure of nearer heirs.

BUT MISRA holds, that she is also subject to control in respect of immoveable property descending to her from her husband through the intervention of her son, in other words, property of a son devolving on his mother. JĪMU'TAVA'HANA and the rest affirm, that a woman is subject to control in respect of wealth any how devolving on her alone. Thus "*childless*," in the text above cited, supposes property descending to her by failure of nearer heirs. Consequently immoveables, even though given by her husband, shall be taken by *his* heirs only.

A HUSBAND having independent power by the text of CA'TYA'YANA (CCCCCLXX), over wealth acquired by his wife during coverture, and a father being also owner of wealth earned by his unmarried daughter (for the word son, in the text of MENU, Book III, Ch. I, v. LII 1, signifies both son and daughter, since it is not determinately restricted to the *masculine* gender;) what is the rule concerning property acquired by a widow? It should not be answered, her brother is sole heir, because none can contest his claim, since her husband, the *only* obstacle to his succession, is dead. The brother is pronounced heir to that wealth only, which was given by her parents (DIX). To the question thus proposed, the answer is, no; for it has been already mentioned, that the husband, mother, and brother are, in every instance, heirs, on failure of opponents.

AGAIN; according to the opinion of those, who contend that the legal heirs of the daughter succeed, on her demise, to the estate of her father which had devolved on her, wealth, descending to a woman in default of nearer heirs, is her peculiar property. Even in that case the rule of decision is this;

\*the mention of the six fold property of women, established by authors to be an exception of fewer distinctions, relates to property, over which they universally have independent power by the tenour of the precept. For the estate of her father, though devolving on his daughter after her marriage, becomes the property of her husband, since he is declared by the text above cited (Book III, Ch. I, v. LII 1) to have dominion over *all* her property excepting the six sorts specified: but that precept does not relate to the peculiar possessions of a woman, since it is opposed by a separate text. Thus wealth, received a few days before marriage, is not the peculiar property of a woman in the technical acceptance of the term, although she have independent power over it. In like manner, since the husband has in some instances dominion over wealth acquired by his wife, a widow has not universally an uncontrolled power over her own acquisitions in general, although she sometimes have such power. Here again, although the husband have a title in the wealth acquired by his wife during coverture, his ownership is subject to the control of his wife; after his death, it shall be enjoyed by her alone; but, if she die *before him*, it shall be taken by the legal heirs of her husband: the regular claimants of a woman's separate property have no right in this instance. If her husband die first, her *acquired* wealth becomes the sole property of this woman, who earned it; in that case, it shall be taken by the legal heirs of her peculiar effects: but, if the wife die first, her wealth becomes the sole property of her husband, and shall therefore be taken, *after his demise*, by his legal heirs. If partition be made during the life of *the married pair*, such wealth shall be divided between them, according to the opinion of those, who contend for partition between husband and wife: the sons obtain no share of it, since no text ordains *their participation*. This should be admitted, because legislators have delivered no other rule concerning wealth acquired by women; because the husband is declared to have dominion over it; and because the father and son are observed to share the wealth which is acquired by the son. Thus some authors expound the law.

BUT, according to JI'MU'TAVA'HANA, RAGHUNANDANA and the rest, the wife is sole owner of wealth acquired by her, even during coverture; yet she has not independent power over it, so long as her husband lives: *for the*  
negative

negative in the text of MĒNŪ (Book III, Ch I, v LII 1) conveys the sense of imperfection. Consequently they have no wealth exclusively their own, and the imperfection of *their property* consists in the want of uncontrolled power. It must be therefore understood, that the legal heirs of a woman's peculiar property succeed also to this wealth. Although it be suggested, that the same should be likewise affirmed in respect of her father's estate devolving on a daughter *by failure of nearer heirs*, still we do not investigate this *claim*, because it is asserted by JIMUTAVAHANA and RAGHUNANDANA, that the legal heir of her father succeeds to that estate.

A DAUGHTER may at pleasure give away to any person whomsoever the exclusive property of her mother, which has devolved on her, after her death, the daughter's son in law and the rest shall obtain that, *which has not been aliened*. It should not be argued, that a daughter is only permitted to enjoy for life the peculiar property of a woman, *which she has inherited*, like the estate left by a man, *to which she has succeeded*. That has not been asserted by JIMUTAVAHANA, and no reasoning supports it.

